# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~468.~~ 257 57

THOMAS J. FROW, APPELLANT,

vs.

TOMAS DE LA VEGA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

**FILED JANUARY 6, 1871.**

# SUPREME COURT OF THE UNITED STATES.

## No. 468.

THOMAS J. FROW, APPELLANT,

vs.

TOMAS DE LA VEGA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

INDEX.


| | Original. | Print. |
|---|---|---|
| Citation on appeal | *a* | 1 |
| Title of case appealed | 1 | 1 |
| Entry rules | 1 | 2 |
| Motion for injunction | 2 | 2 |
| Order of court on motion | 3 | 2 |
| Bill of complaint | 4 | 3 |
| Affidavit of Mussina | 28 | 11 |
| Exhibit to bill | 30 | 12 |
| Subpœna to T. J. Frow, and return | 33 | 13 |
| Motion to extend time, &c. | 34 | 14 |
| Motion to extend time to answer | 35 | 15 |
| Affidavit of T. J. League | 36 | 15 |
| Order of court on motion to extend, &c. | 38 | 16 |
| Pro confesso as to Frow and others | 39 | 17 |
| Motion of complainant to make absolute | 40 | 17 |
| Entry rules | 40 | 18 |
| Motion of defendant, Frow, to postpone hearing of complainant's motion to make absolute | 41 | 18 |
| Motion of complainant for writ of attachment, and to make absolute | 43 | 19 |
| Motion of complainant for decree | 44 | 20 |
| Order of court upon foregoing motions | 45 | 20 |
| Setting down for hearing at rules | 45 | 21 |
| Order making pro confesso absolute as to Thomas J. Frow, defendant | 46 | 21 |
| Motion of defendant, Frow, to set aside decree of February 7, 1870 | 47 | 22 |
| Affidavit of Plattenburg, referred to in motion, Exhibit 1 | 55 | 23 |
| Affidavit of T. J. Frow, Exhibit 2 | 54 | 24 |
| Affidavit of W. M. Walton, Exhibit 3 | 57 | 25 |
| Answer of Frow, Exhibit 4 | 58½ | 26 |
| Answer of Jno. W. Lapsley, adopted by Frow in his answer | 84 | 34 |
| Answer of Plattenburg adopted by Frow in his answer | 156 | 60 |

| | Original. | Print. |
|---|---|---|
| Order of court on motion | 179 | 66 |
| Objections of defendant, Frow, to signing of decree, &c | 180 | 68 |
| Affidavit of Thos. J. Frow, Exhibit 5 | 187 | 70 |
| Motion of complainant for decree | 194 | 72 |
| Order overruling defendant's objections | 195 | 73 |
| Decree final | 196 | 74 |
| Notice of appeal | 197 | 74 |
| Petition for appeal | 198 | 75 |
| Bond for appeal | 200 | 75 |
| Copy of citation on appeal, and marshal's return | 202 | 76 |
| Clerk's certificate | 204 | 77 |

*a* *Citation on appeal.*

UNITED STATES OF AMERICA:

In U. S. circuit court, western district of Texas, sitting at Austin.

THOMAS J. FROW, APPELLANT,
*vs.*
TOMAS DE LA VEGA, APPELLEE.

The President of the United States to Thomas de la Vega, or his attorney of record, William Alexander:

You are hereby cited and admonished to appear at the next term of the Supreme Court of the United States, to be held at Washington, on the first Monday of December next, to show cause, if any there be, why the decree rendered in your favor by the circuit court of the United States, sitting in chancery, at Austin, in said district, in a certain cause or suit therein depending between Tomas de la Vega, as complainant, and John W. Lapsley, Westley Plattenburg, Thomas J. Frow, Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, J. B. Earle's adm'r, Ed. Ward Kellum's adm'r, W. R. Kellum, and John C. Watrous, as defendants, numbered 37 on the chancery docket of said court, at Austin, should not be reversed, and speedy justice be done to the partys in that behalf, in pursuance of an appeal obtained by Thomas J. Frow, one of said defendants, according to his petition, filed in the circuit court of the United States for the western district of Texas, at Austin.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court at Austin, this 28th day of March, A. D. 1870.

T. H. DUVAL,
*U. S. Judge.*

Teste with seal of court.
[SEAL.]

M. HOPKINS, *Clerk.*

*b* (Indorsed:) In U. S. circuit court, in chancery, Austin. Thomas J. Frow, appellant, v. Tomas de la Vega, appellee. Citation on appeal. Issued March 28, 1870. M. Hopkins, cl'k. Hale, Walton & de Normendie, on appeal, sol's.

Rec'd in office, March 28th, 1870.

Executed March 29th, 1870, by handing to W'm Alexander, att'y & solicitor of Tomas de la Vega in person, a true copy of this citation under the seal of the court.

THOMAS F. PURNELL,
*U. S. Marshal W. D. Texas.*

Filed March 29, 1870. M. Hopkins, cl'k.

1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, in and for the western district of Texas, at Austin, sitting:

THOMAS J. FROW, APPELLANT,
*vs.*
TOMAS DE LA VEGA, APPELLEE.

Be it remembered that, at a term of the circuit court of the United

States, fifth circuit, in and for the western district of Texas, sitting in chancery, at Austin, for the January term, A. D. 1870, of said court, the Honorable Thomas H. Duval, United States district court judge, sitting as chancellor in the absence of a judge of the circuit court, the following, among other proceedings, were had:

Be it remembered that, on the sixth day of April, A. D. 1868, at rules, came the complainant in chancery, Tomas de la Vega, by his solicitor, and the following entry appears:

*Entry.—Rules.*

APRIL 6TH, 1868.

TOMAS DE LA VEGA *vs.* JOHN W. LAPSLEY ET ALS. } No. 37. Chancery.

On this day came the complainant, Tomas de la Vega, by his solicitor, and files his bill of complaint against the defendants, John W. Lapsley, Westly Plattenburg, and Thomas J. Frow, citizens of Alabama, now in McLennan County, Texas; Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall,
2 S. H. Renick, J. B. Earle, Edward Kellum, and W. R. Kellum, all residing in McLennan County, Texas, and the Hon. Jno. C. Watrous, in the eastern district of Texas, at Galveston.

M. HOPKINS, *Clerk.*

And afterwards, to wit, the following day, April 7th, 1868, the following entry appears upon the rule book.

*Motion for injunction.*

DE LA VEGA *vs.* LAPSLEY ET ALS. } In chancery. No. 37.

Now comes Tomas de la Vega, the complainant in the above-entitled and numbered cause, and submitting to your honor his original bill on file and the affidavit in support thereof, moves that a special injunction be granted him as is therein prayed, enjoining defendants from selling and from trespassing on the Tomas de la Vega grant; and, in consideration of the pending emergency, that it be granted at once, said injunction to be until answer, and until further order of the court; and complainant moves in the alternative that in case the injunction as asked above be not granted, notice of this application be given by a service thereof, that such injunction will be moved for, and is now moved for at the appearance day at rules in this cause.

ALEXANDER,
*Sol'r for Compl't.*

And on the same day, the following order was entered as it appears on the rule book:

3 *Order of court on motion.*

AT CHAMBERS, AUSTIN, *April 7th*, 1868.

DE LA VEGA *vs.* LAPSLEY ET AL. }

It is ordered that the clerk of the circuit court of the United States

for the western district of Texas, at Austin, will, at the same time that he issues the process of subpœna on the bill, issue a notice to the defendants therein that a writ of injunction, as prayed for in the bill, will be moved for on the first Monday in June next.

The bill of complaint filed, April 6th, 1868, is endorsed as follows:

In chancery. No. 37. De la Vega v. Lapsley et al. Bill filed April 6, 1868. M. Hopkins, clerk.

And is in words, to wit:

4 *Bill and exhibits.*

DE LA VEGA *vs.* LAPSLEY ET ALS. } In ch'y. No. 37.

To the honorable the judges of the circuit court of the United States of America, within and for the western district of Texas, sitting at Austin, in equity:

Tomas de la Vega, an alien to said United States of America, and a citizen of the Republic of Mexico, residing in the city of Saltillo, and State of Coahuila, therein brings this his bill against John W. Lapsley, Westley Plattenburg, and Thomas J. Frow, each of whom is a citizen of Alabama, and is now transiently in McLennan County, Texas, and Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Rennick, J. B. Earle, Edward Kellum, and W. R. Kellum, each of whom is a citizen of Texas, residing in McLennan County, and the Hon. John C. Watrous, who is a citizen of Texas, and is the judge of the district court of the United States for the eastern district of Texas, residing at Galveston.

And thereupon your orator complains & says that the statements in the introduction hereof are true, and that, on the fourth day of
5 October, A. D. 1833, your orator was invested, in accordance with law, by the proper authority of the State of Coahuila and Texas, with a good title as the original grantee thereof, and with the possession of a certain tract of land, situate in what is now McLennan County, in Texas, on the east bank of the Brazos River, opposite the town of Waco, consisting of eleven sitios or square leagues, the metes and bounds of which are publicly and generally known; said tract being in like manner designated, "The Tomas de la Vega grant."

And your orator further states that he has continued to be seized and possessed of said tract, never having alienated the same from the date aforesaid until the present time; that he is still so seized and possessed thereof, as is hereinafter shown, having good title thereto, and that said tract, being of excellent quality, has increased in value until it is now worth not less than three hundred thousand dollars.

And your orator further states that at some time, which he is unable to fix with precision, but which was prior to the ninth day July, A. D. 1850, the following named of the defendants hereto, to wit: the defendants Lapsley, Plattenburg, Frow, and Watrous, together with
6 Thomas M. League, James L. Price, and Thornton B. Goldsby, each of whom has since departed this life, with a full knowledge, and with notice actual and constructive, of all the facts touching the title to said tract which are herein set forth, having ascertained that said tract was then intrinsically valuable and was increasing in value, conceived the design, which they, and each of them in their sev-

eral and respective capacities, official and otherwise, have ever since persistently labored to execute, of defrauding your orator out of his said tract, and of its rents, profits, and proceeds, and of wrongfully appropriating the same to themselves; and accordingly did, with the intent to injure your orator and to benefit themselves, conspire and confederate together, and, as their conspiracy progressed, with their other co-defendants hereto, who had full knowledge of all the facts herein stated, to cloud his title to said tract, to deprive him of the rents, profits, and proceeds thereof, to subject him to costly and protracted litigation touching the same, and, if possible, to force him to sell to them the said tract for far less than its value, or else to lose the same entirely, by means of a forged testimonio, as is hereinafter set forth.

7 And your orator further states that, in pursuance of their conspiracy aforesaid, and with the design and intent stated, said named defendants did, at Dallas County, in the State of Alabama, on the ninth day of July, A. D. 1850, procure from said League a conveyance of what they then claimed, and which they persist in claiming, to be the legal title to said tract, to defendant Lapsley, who then held and still holds the same for the common benefit of them all, and of the legal representatives or heirs of the persons mentioned as having departed this life. And your orator further states that the pretended legal title so claimed to have been acquired by defendant Lapsley, is deraigned by defendants from your orator as the original grantee of said tract as follows, to wit:

Firstly. By means of the instrument heretofore mentioned, claimed by defendants to be the testimonio of a power of attorney from your orator to one Samuel May Williams, since deceased, empowering him to sell and convey said tract, dated on the fifth day of May, A. D, 1832, which testimonio, your orator distinctly avers to be a forgery,

8 and not the public act or deed of your orator, and not the testimonio of any protocol or original signed by your orator, existing or that existed in the archives of the ayuntamiento of Saltillo; and states that the defendants hereinbefore named and their co-conspirators deceased, had full knowledge of these facts at the time they acquired by means of the conveyance for their common benefit to said defendant Lapsley, the interests they respectively claim in said tract; and that since the second day of February, A. D. 1859, said faets have been known to all the world as matters of public and general notoriety, the same having been published in report No. 540 of the House of Representatives of the United States, made at the first session of the thirty-fifth Congress.

Secondly. By means of a deed of trust, a more particular description of which your orator is unable to give at this time, made by said Williams by virtue of said testimonio, and of no other authorization, to M. B. Menard and Nathaniel F. Williams, as trustees, conveying said tract to them for the use and benefit of Mrs. Sophia St. John, who was the sister of said Samuel and Nathaniel.

Thirdly. By means of a deed from Mrs. St. John, by her attor-

9 ney-in-fact, and a subsequent ratification thereof under seal by herself, which your orator cannot now more particularly describe, conveying such title as she acquired by the deed of trust aforesaid to said League, now deceased.

Fourthly and lastly. By means of the conveyance first aforesaid, which your orator states was made in Dallas County, in the State of Alabama, on the ninth day of July, A. D. 1850, for the use and with the design aforesaid, which conveyance contains a covenant of war-

ranty "against the said Tomas de la Vega and all others claiming or to claim by, under, or through said Tomas de la Vega," and against said League as the grantor of said tract to defendant Lapsley, against any incumbrances done to or suffered to be done to said tract by him, and against anybody else; and your orator distinctly avers that so soon after said testimonio had been impeached as a forgery in court and elsewhere as practicable, said League was released by his co-conspirators aforesaid from said covenant of warranty against your orator; which facts, taken together, show the contemporaneous knowledge and the persistency of the named defendants to be as is herein stated.

10 And your orator further states that said named defendants, in pursuance of their conspiracy aforesaid, sent their attorney and legal counsel, Robert Hughes, esq., who has since deceased, to Austin, to obtain said testimonio, which he accordingly did, showing at the time, by his affidavit, and on file in the general land office, dated on the 16th day of December, A. D. 1854, a photograph of which your orator craves leave to produce at the hearing of this cause, and to file as a part hereof, marked Exhibit A; that he considered that it only "purported to be" executed, and that he was not willing to swear that it was, or even appeared to have been executed by your orator. And your orator, averring that said testimonio so obtained is still in their possession or under their control, further states that said named defendants, believing the said testimonio to be a forgery, and yet determined to alter and make use of it as a genuine and valid instrument, did, and omitted to do, either in person or by their agents or attorneys, or some of them, the following distinctly and specifically enumerated acts touching the same, to wit:

1. That they sent one John Treanor to Saltillo, who went, accompanied as far as Monterey by said League, as their agent to procure

11 proofs of the validity of said testimonio—which he took with him—who examined the archives of the ayuntamiento at Saltillo, and finding that the original in the said archives, of which said forgery was claimed to be the testimonio, was not signed by your orator, omitted to obtain proof of said testimonio by having it compared with the original; omitted to obtain a sworn copy from said archives, or to have a daguerr'otype or photograph taken of the original, and omitted to testify himself.

2. That said Treanor took care not to take the deposition of Juan Gonzales, the register, who is claimed to have originally authenticated said testimonio, and who resided in Saltillo, after an inspection of the original for the purpose, or when having the original before him.

3. That, in order to prevent said Gonzales from being punished by the laws of Mexico for false swearing, or in order to prevent him from examining the original and swearing the truth, and to prevent notice to or casual knowledge on the part of your orator, who was in Saltillo at the time, said Treanor and said League paid said Gonzales thir-

12 teen hundred dollars and his expenses, in order to induce him to go outside of Mexico and prove up said testimonio, at a time when he was too blind to read it.

4. That said named defendants took care to obtain the affidavit and the depositions, also, of Dr. James Hewitson to said testimonio when he had not examined the original, and when he was away from Saltillo, where he resided, and where it is, and induced him to swear that said Gonzales was dead, when in fact he was still living.

5. That said named defendants took care to obtain the affidavit of Juan N. Seguin to said testimonio when he was not in Saltillo, and when it does not appear that he ever saw the original.

6. That, in order to avoid acting in good faith, and in order to prove up said testimonio improperly, said named defendants expended between five and six thousand dollars, when they could have proven up said testimonio, had it been genuine, for less than one hundred dollars, and when, indeed, had it been genuine, it would have been acknowledged to be such by your orator.

And your orator further states that, afterwards, to wit, on the
13 day of , defendants Thomas and James E. Harrison, Gurley, Goode, Norris, McCall, Renick, Earl, and Edward and W. R. Kellum, with a full knowledge of all that is herein stated, united in the conspiracy aforesaid of their co-defendants, and have aided and abetted them, and still continue to aid and abet them in the same, and that they and each of them, respectively, are claiming portions of said tract as their shares thereof, and that, by uniting in said conspiracy and by so doing, they and each of them adopt all the acts in furtherance thereof of each of the rest, whether done before or after they had so united.

And your orator further states that such interest, to wit, one undivided fourth part, as said defendant Watrous had in said tract by means of the conveyance aforesaid to defendant Lapsley, was, on the tenth day of April, A. D. 1858, duly levied upon by virtue of an execution from the district court of Galveston County, issued upon a judgement in favour of one Joseph Moreland & against said Watrous, and was afterwards sold, and was, still later, by means of divers mesne conveyances, acquired by your orator on the thirtieth day of October,
14 A. D. 1860, by means of a deed of that date, whereby he avers that the possession of certain portions of said tract by said Lapsley became, and still continues to be, the possession thereof, as well as of the rest of said tract, of your orator.

And your orator further states that, in order to make use of his office as district judge of the United States to carry out said conspiracy, said Watrous did, on the day of , and in the suit of vs. , admit said testimonio in evidence before the jury of his court.

And your orator further states that defendants have continually asserted that the equitable title to said tract was acquired by Stephen F. Austin, on the fifth day of May, A. D. 1832, by means of said testimonio, which was made for his benefit, and which took effect on the fourth day of October, A. D. 1833, when said tract was titled; and that, in order to sustain their assertion, they caused the records of the alcabala in Saltillo to be examined by their agents, two of whom are believed to have been John Treanor and William G. Hale, esq., in order that they might prove thereby that the alcabala on the sale they asserted to have been made to said Austin to have been paid; and that they ascertained from the searches made that no alcabala on any sale made of said tract had been paid in the years 1832 or 1833, and, indeed, at
15 any time afterwards, while said tract was still comprehended in the territory of the State of Coahuila and Texas.

And your orator further states that, on and since the first day of February, A. D. 1861, he was, and has continued to remain an alien friend of the United States of America, and that, on and after that date, all of defendants, except defendant Watrous, became and were "the public enemy" of said United States.

And your orator further avers that said Lapsley and others of defendants, being "the public enemy" as aforesaid, in furtherance of their conspiracy aforesaid, took advantage of the rebellion to benefit them-

selves and to injure your orator, and did fraudulently and collusively cause said tract to be divided out among themselves and others by a decree of a rebel district court, a certified copy of which your orator craves leave to file herewith at the hearing of this cause, marked "Exhibit B," taking for themselves and others the best portions thereof, and leaving to your orator, who was unrepresented and did not appear in such court, small and comparatively worthless portions thereof, and did enter by force and arms on said tract, destroy the grass and timber growing thereon, take the rents, profits, and fruits thereof, and
16 divers other trespasses committed thereon, to the great wrong and injury of your orator, and so continued to do on the day of , and the day of every ensuing year until the present time; for all which, together with the conspiracy aforesaid, he has brought his suit at common law, alleging himself to be damaged in the sum of one hundred and fifty thousand dollars; and he makes these allegations, also, in order that, by means of this bill, he may obtain a discovery from defendants in aid of his suit at law.

And your orator further states that said tract though worth three hundred thousand dollars, owing to the actings and doings of defendants as hereinbefore stated, and because they still persist in the same, and in stating that said Lapsley has good legal title to said tract, and that your orator has no title, they have cast a cloud upon the title of your orator, and have prevented him hitherto, and he fears will prevent him hereafter from selling said tract or any part thereof for its just value, and that they are continually endeavoring to sell the same themselves. And your orator submits to your honors that an injunction to restrain said defendants and their agents, and all claiming and to
17 claim under them from asserting title by reason of said forged testimonio from selling, and from trespassing upon said tract, should be awarded him in consideration of the premises; and such is here sought.

And your orator averring that all of the actings and doings of defendants and of each of them as hereinbefore stated, are contrary to equity and good conscience, and are in fraud of his rights as herein set forth, alleges that, previously to this suit being commenced, that is to say, on the day of , and at other times he applied, and caused application to be made to each of said defendants and his agents by letter and otherwise, requesting him and them to act towards your orator in such a way as is equitable and just, and as is hereby prayed, and to desist from the unreasonable and unjust practices herein mentioned; and your orator had well hoped that these his reasonable requests would have been complied with. But now as it is, may it please your honors, that said defendants, combining and confederating together, and with divers other persons at present unknown to your orator, but whose names when discovered your orator prays he may be at liberty to insert and make parties defendant hereto, with proper and apt words to
18 charge them, and contriving*ing* how to wrong and injure your orator in the premises, absolutely refuse to comply with such requests.

And said defendants sometimes pretend that said testimonio is not a forgery; that the original thereof was signed by your orator; that defendant Lapsley has good legal title to said tract deraigned by means thereof; that your orator has divested himself of his title as original grantee to said tract; that your orator has not acquired such interest as defendant Watrous had in said tract, and is not in possession thereof as aforesaid, and that they have not been possessed of the knowledge,

and have not conspired and acted together impelled by the common design, as is hereinbefore stated; that said tract is not of the value alleged; that defendants have not damaged your orator in the sum stated, or any other sum; that they did not take advantage of the rebellion as is alleged; whereas your orator charges the direct contrary thereof to be the truth, and directly avers and charges that they or some of them, or some person they can control, have said forged testimonio in their possession with the intent of using it hereafter with a full knowledge of its character, to the prejudice of your orator.

19 And your orator charges further that there are now in the separate possession of defendants divers letters, papers, and memoranda having relation to the matters in question, and proving the truth of the allegations made in this bill. And your orator here seeks from such of said defendants descriptive and full particulars thereof.

All which actings, doings, refusals, and pretences are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises. In consideration whereof and forasmuch as your orator is remidiless at and by the rules of the common law, and cannot have adequate relief save in a court of equity where matters of this and like nature are properly *organi*zable and relievable: To the end, therefore, that the said defendants and each of them may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best of their several and respective knowledge, remembrance, information, and belief, full, true, and perfect answer make to such of the several interrogatories hereinafter mentioned and set forth as by the note hereunder written they are respectively required to answer, they are interrogated as follows, that is to say:

1. Whether the legal title claimed to be held by defendant

20 Lapsley, as in this bill stated, by conveyance from League, does or does not for its validity depend solely upon said testimonio; if not upon what, regardless of said testimonio, does it depend?

2. Whether said testimonio was believed, suspected, or known to be a forgery at and before the conveyance from League to defendant Lapsley; if nay, why was a covenant of warranty against De la Vega and any person claiming through him inserted in said conveyance, and why, when said testimonio was impeached as a forgery, was said League released from said warranty?

3. Whether any and what searches were made, and when, and by whom, in behalf of defendants, or any and which of them, in the office of the secretary of the ayuntamiento of Saltillo, and in the office of the archives of the alcabala in Saltillo, and whether, as the result thereof, defendants or any and which of them were informed that said testimonio was a forgery—the original of which it purports to be—the testimonio never having been signed by said De la Vega; and the alcabala fixed in accordance with law never having been paid on any sale of said tract while the same remained within the territory of the State of Coahuila and Texas?

4. What sum or sums of money have defendants, or any and

21 which of them expended, and to whom, in such instance, in avoiding to have a daguerr'otype or photograph taken, or a true copy made of what is claimed to be the original archive of said testimonio remaining in the archives of the ayuntamiento at Saltillo, and in endeavoring to prop said forged testimonio by evidence obtained away from Saltillo and outside the territory of Mexico, and without notice to Tomas de la Vega?

5. In whose possession is said testimonio at this time?

6. Is said testimonio of record in McLennan County; if yea, when, and at whose procurement, and upon what proof was it first so recorded, and was it previously proven up and recorded in any and what other county?

7. Is said testimonio of record in Falls County; if yea, when, and at whose procurement, and upon what proof was it so recorded; if upon different proof from that used in McLennan County, wherein and why was it different?

8. Does the original of said testimonio, of May 5th, A. D. 1832, contain the signature of Tomas de la Vega; have you not stated in conversation, or by letter or by both modes, that you did not believe it contained his signature; if you have changed your belief as to that, when have you changed it and from what cause?

22 9. Why was between five and six thousand dollars expended, by a portion of defendants, to prove up said testimony, when, if not a forgery, it might have been proved up by depositions in the usual mode, or in any honest mode at a very small expense?

10. Did not certain, and which, of defendants, to prove that said testimonio "was a genuine document," pay out five thousand four hundred and twenty-three dollars and seventy-two cents, that is to say, twelve hundred and fifty dollars to said League, "something like" thirteen hundred dollars to John Treanor, and thirteen hundred dollars to their witness Juan Gonzales, in addition to his expenses going out of and remaining and returning to Mexico, &c.

11. Are the statements in this bill, touching the sending of Treanor to Mexico, and the acts and omissions to act in attempting to prove up said testimonio, true; if nay, wherein, in each and every particular, are they otherwise?

12. Are the statements in the bill as to conspiracy, common intent, and design of defendant, or as to any, and which, of them, matters of public and general notoriety; if any, wherein, in each and every particular, are they otherwise; has any and what combination, contract or contracts ever been made, and between any and which of de-

23 fendants touching the De la Vega grant.

13. Has the defendant Watrous, as a district judge of the United States, ever decided said testimonio to be good and to be admissible in evidence before a jury; if yea, when, how, on what proof, under what circumstances, and in what suit, and was any, and what, relation or connection of any, and which, of the *the* parties originally interested with defendants Lapsley and Watrous in said suit the foreman or a member of said jury?

14. What is the value of said tract, and what value of the rents, profits, and what has been the value of the use and occupation of, and of the timber cut and taken from the same since the first day of February, A. D. 1861; how much has been collected by and how much is due defendants for sales of parts thereof?

15. Supposing all the material allegations in this bill to be true, what amount of damages ought Tomas de la Vega to be justly entitled to recover of defendants, or any and which of them, for the actings and doings of defendants as stated.

16. Whether the statement in the bill, as to the status of defendants from and after the inception of the rebellion, is true; if any, wherein, in each and every particular, is it otherwise?

24 17. How much and what portion or portions, describing the same particularly, or what undivided interest in the Tomas de la Vega

grant has been, and how much is now, claimed by each of defendants respectively; and when, how, from whom, and for what consideration, stating whether the same is paid or unpaid, was the portion, portions, or interest claimed obtained; how much and what portion or portions, describing the same particularly, or what undivided interest in said grant has been sold or encumbered by each of defendants respectively; to whom and for what consideration, stating whether the same is paid or unpaid, was the sale or incumbrance made?

18. Has any judgment or decree, or have any judgments or decrees, been obtained by defendants, or any and which of them, in any & what rebel district court or courts, affecting the Tomas de la Vega grant, or any and what portion thereof; if yea, was or were the same obtained fraudulently and collusively, or fairly, with said De la Vega represented by an attorney authorized to compromise his interest for him present; has not each of defendants admitted, in conversation, such judg-
25 ment or judgments, decree or decrees, to have been fraudulently and collusively obtained, and when said De la Vega was not represented in court by any one authorized to compromise his interests.

And your orator prays that the defendants, upon being served, &c., may be bound by all the proceedings in this cause, and that they may answer the premises; that, by a decree of this honorable court, the title of said tract be freed from all clouds put upon it by defendants, and any person or persons claiming or to claim in any manner by, through, or under them or any of them, or that deraign title through them or any of them, and that your orator be quieted in his title to and possession of said tract; and that said forged testimonio be decreed to be delivered up to and cancelled by order of this honorable court. That defendants, and all claiming and to claim, deraigning and that may deraign title through them, their agents and attorneys, may be injoined, pendente lite, from selling, conveying, and trespassing upon said tract; and, that at the hearing of this cause, may be perpetually injoined from claiming title or possession of said tract or any part thereof in any manner, through said testimonio or through defendant Lapsley; and praying that he may have his discoveries sought in aid of his
26 suit at law, and for such other and further relief as to this honorable court may seem meet your orator will ever pray, &c., &c.

May it please your honors to grant unto your orator, not only a writ of injunction, issuing out and under the seal of this honorable court, to be directed to said defendant Lapsley, his agents and attorneys, to restrain him and them selling, of conveying title to, giving possession of, or trespassing on said tract, or any part thereof, pending this suit, but also writs of subpœna to be directed to each of the defendants to this suit, that is to say, to said Jno. W. Lapsley, Westley Plattenburg, T. J. Frow, John C. Watrous, Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, J. B. Earle, Edward Kellum, and W. R. Kellum, and their confederates, when discovered, thereby commanding them and every one of them at a day certain, and under a certain pain, to be therein limited, personally to be and appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to and perform, and abide such further order, direction, and decree; and that the defendants named, upon being served, &c., may be bound by all the proceed-
27 ings in this cause.

ALEXANDER,

*Solicitor for Complainant, residing at Austin, Texas.*

AP'L, 6TH, 1868.

NOTE.—The defendants Lapsley, Plattenburg, and Frow, are required to answer the interrogatories respectively numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18; the defendant Watrous, is required to answer those numbered 4, 8, 10, 12, 13, 14, & 17, and the defendants, Thomas & James E. Harrison, Gurley, Goode, Norris, McCall, Renick, Earle, Edward and W. R. Kellum, are required to answer those numbered 1, 2, 5, 6, 7, 8, 12, 14, 15, 16, 17, and 18.

ALEXANDER,
*Solicitor for Complainant.*

28 DE LA VEGA *vs.* LAPSLEY, ET ALS. } In ch. No. .

This affiant, Simon Mussina, of the city and State of New York, being first duly sworn, makes oath and says that the allegations contained in the stating part of the foregoing bill are true, to the best of his knowledge, information, and belief. Affiant states that he had been, since about A. D. 1856, and is now, attorney-in-fact of Tomas de la Vega, touching the tract of land in this bill mentioned and described, and that he has made it his business to obtain all the information and knowledge he could touching it, and that he has visited it in person during the last month; that while in McLennan County he saw and conversed with Thomas J. Frow there, and learned from him and divers other persons, that John W. Lapsley, accompanied by Wesley Plattenburg, intended to be in McLennan County about this time, in order to sell a large portion of said tract, and he verily believed they now are or soon will be there, and that unless the defendants to the bill are restrained by an injunction, a sale or sales, a conveyance or conveyances of said tracts, or parts thereof, will be made to the great wrong and damage of said De la Vega.

Affiant further states that he found in a newspaper, published
29 in McLennan County, on the day of , A. D. 1868, the advertisement which he here inserts, [interlined in original "at the end of this affidavit,"] and refers to as a part hereof.

Affiant further states that he is informed and verily believes that, although since De la Vega acquired by purchase such undivided interest as the defendant Watrous claimed, and was admitted by his co-defendants to have in said tract, and thereby obtained such possession as defendants had.

Affiant further states that defendants, in carrying out their conspiracy to defraud said De la Vega, continue to recognize the interest of said Watrous, and to deny that it has been vested in said De la Vega.

Affiant further states that divers of defendants have and claim no interest in said tract of land, save that which they obtained by means of a fraudulent and collusive decree, as in the bill stated, which decree he has seen and read.

Affiant further says that he is informed and verily believes, and therefore states, that defendants are aware that the testimonio of May 5th, 1832, is a forgery, and that the original of which it purports to be the testimonio does not contain the signature of Tomas de la Vega; that they have so frequently admitted to each other, and to other persons, and that they still believe such to be the fact; yet that they continue to trespass upon said tract, and to act, do, &c., as in the
30 bill stated.

And further affiant saith not.

The words "at the end of this affidavit," interlined before signing.

SIMON MUSSINA.

Sworn and subscribed to before me, this 6th day of April, A. D. 1868.

MATHEW HOPKINS, *Clerk.*

*Sale postponed.*

Circumstances render it necessary and imperative to postpone the sale of the land embraced in the subjoined advertisement from Monday, the 16th March, to Wednesday, the 15th April.

JOHN W. LAPSLEY.

FEB 14, t. s.

*Sale of lands near Waco.*

In accordance with an agreement with parties interested, I will sell at public auction, before the court-house door, in the city of Waco, on Monday, March 16th, 1868, and succeeding days, about 32,000 acres of land, lying around and near that city, being the larger part of the grant to Tomas de la Vega, on the following terms: The land will be put up in sections, or quarter and fractional sections, according to the survey and plan made by L. Tutt, esq., surveyor, so that any purchaser
31 may buy any particular quarter section, or 160 acres, and will be struck off to the highest and best bidder, for U. S. legal tender notes, the purchaser paying one-third cash, balance in two equal instalments at one and two years, with ten per cent. interest, secured by notes and vender's lien; stamps at expense of purchaser. The title vested in me is believed to be perfect, but only such title as I possess will be conveyed. The right to bid is reserved to myself and others interested, but our object is only to obtain the fair market value of the land, and to effect a partition between those interested. These lands comprise bottom and uplands of the most fertile character, well situated, high, and sufficiently timbered. They are in the immediate neighborhood of the most thriving town in Texas, and within the wheat district of the State. Planters and farmers will find this to be the best opportunity ever offered of buying lands suitable for cultivation, in the present state of the country.

There will also be sold at the same time, in five and ten acre tracts within said grant, about 1,000 acres of timbered land, commencing about one mile from Waco and immediately in rear of the Waco Cotton Factory. Terms, one-third cash, and balance at one year, with ten per cent. interest, for which the purchaser will execute his note with personal security to my satisfaction.

32 A full plot of all the above land can be seen in the county clerk's office at Waco. Particulars as to title can be had by reference to Richard Coke, Tho's Harrison, and E. J. Gurley, attorneys at law, at Waco, or Tucker & League, at Galveston.

Feb. 14. ta. JOHN W. LAPSLEY.

Subpœna issued to Thomas J. Frow, one of the defendants in the aforesaid cause, in words and endorsed to wit:

33 Circuit court of the United States for the western district of Texas, at Austin, sitting in chancery.

UNITED STATES OF AMERICA,
*Western District of Texas:*

The President of the United States to the marshal of the western district of Texas, and to all whom these presents may come, greeting:

To THOMAS J. FROW.

Tomas de la Vega, of the city of Saltillo, State of Coahuila, and Republic of Mexico, an alien friend of the United States of America, by his solicitor, William Alexander, having filed his bill of complaint against John W. Lapsley, Westley Plattenburg, and Thomas J. Frow, each of whom are citizens of Alabama, now transiently in McLennan County, Texas, and Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, J. B. Earl, Edward Kellum, and W. R. Kellum, each of whom are resident citizens of McLennan County, western district of Texas, and the Hon. John C. Watrous, who is a citizen of the eastern district of Texas, residing at Galveston, in said district, who are made defendants:

We command you, and every one of you, the defendants herein named, that, laying all other matters and excuses aside, you do cause an appearance to be entered for you in our court of chancery to the bill herein recited and exhibited against you; and that you do answer concerning such things as shall then and there be alleged against you, and observe what our said court shall direct in this behalf, upon pain of an attachment issuing against your person, and such other process for contempt as the court shall award.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 8 day of April, A. D. 1868.

[L. S.] MATTHEW HOPKINS, *Clerk.*

Appearances are to be entered on or before the first Monday of June next, June rules; otherwise the bill may be taken as confessed.

M. HOPKINS, *Clerk.*

Received in office, April 13th, A. D. 1868, and executed the same day by handing the within-named defendant a true and correct copy of this subpœna of chancery, and a copy of petition attached, both certified to by the clerk of the court, under the seal of the court.

A. P. BLOCKER,
*U. S. M.*
By ERNEST JOHNSON, JR.,
*Dept. U. S. M.*

*Notice.*—The defendant Thomas J. Frow will take notice that an injunction prayed for in the bill will be moved for on the first Monday in June next.

By order. MATTHEW HOPKINS,
*Clerk.*

(Indorsed:) Filed May 1, 1868. M. Hopkins, clerk. File. Chancery, No. 37. United States circuit court in and for the western district of Texas, at Austin, sitting. Tomas da la Vega versus Lapsley et al. Subpœna in chancery to Thomas J. Frow, McLennan Co. Issued 8 day of April, 1868. Matthew Hopkins, clerk. Alexander, solicitor.

34 And afterwards, to wit, on the 1st day of June, A. D. 1868, the following entry appears upon the rules book, to wit:

*Entry of appearance.*

JUNE RULES, *June 1st*, 1868.

TOMAS DE LA VEGA *vs.* LAPSLEY ET AL. } No. 37.

And now comes the solicitors, Hancock & West, and enter appearance for E. J. Gurley, J. M. Norris, W. R. Kellum, Westley Plattenburg, Thomas J. Frow, Thomas Harrison, J. B. Earle, J. L. L. McCall, Hon. Jno. C. Watrous.

HANCOCK & WEST,
*Def'ts' Sol'c'rs.*

Teste:
M. HOPKINS, *Clerk.*

And afterwards the following entrys appear upon the motion book:

*Entry.—Motion to extend time.*

Circuit court of the United States, western district of Texas, in chancery.

BETWEEN TOMAS DE LA VEGA, COMPL'T, *and* J. W. LAPSLEY AND OTHERS, DEFENDANTS.

The defendants, by their solicitors, move the court that the time for answering the bill of complaint in this cause be extended until the first Monday of August next, and *and* refer, in support of this motion, to the annexed affidavit.

E. J. GURLEY AND RICH'D COKE,
*Solicitors of Defendants.*

Endorsed upon which motion the following order:

AT CHAMBERS, *June 17th*, 1868.

The clerk will file this motion, and enter the same on the order book, and cause the solicitor of complainant to be notified that the same will be heard on Saturday next, or as soon thereafter as convenient.

T. H. DUVAL,
*U. S. Judge.*

35 I do hereby accept service of the foregoing motion, expressly stating that I waive nothing thereby except actual service of a copy and notice thereof.
June 18, 1868.

ALEXANDER,
*Sol'c'r for Tomas de la Vega.*

And afterwards, to wit, on the 19th day of June, 1868, the following entry appears upon the chancery minutes or order book, to wit:

AT CHAMBERS, *June* 19, 1868.

TOMAS DE LA VEGA
*vs.*
J. W. LAPSLEY ET AL. } No. 37. Ch'y.

The motion made herein by the solicitors for the defendants that the time for answering the bill of complaint in this cause be extended until the 1st Monday in August next, and, the same having been considered, is hereby allowed.

T. H. DUVAL,
*U. S. Judge.*

And afterwards, to wit, the following motion was filed:

(Endorsed:) Filed July 25, 1868.

In U. S. circuit court, western district of Texas, at Austin, in chancery.

TOMAS DE LA VEGA
*vs.*
JOHN W. LAPSLEY ET AL. } 37. Ch'ry.

The affidavit of J. T. League is filed herewith, and the defendants John W. Lapsley, John C. Watrous, Thomas J. Frow, and Westley Plattenburg respectfully move the court to extend the time for them to answer in this case until the rule-day in September, for the reasons in said affidavit set forth.

WALTON & DE NORMANDIE,
*Solicitors for above-named Def'ts.*

36 *Affidavit of T. J. League.*

In U. S. circuit court, western district of Texas, in chancery.

TOMAS DE LA VEGA
*vs.*
JOHN W. LAPSLEY ET AL. }

I, T. J. League, on oath, say that I am, in the matters involved in this suit, the agent and attorney-in-fact of the defendants Lapsley, Watrous, Frow, and Plattenburg, and am specially charged with the duty of having their answers prepared in time and filed in court; that, immediately after this service of notice of said suit was had on the defendants, I employed W. G. Hale, as counsel, to prepare the answers of said defendants, and that he and myself, together with a copyist, have been actively employed in preparing said answer' ever since, and have made every exertion in our power to have the same ready for filing in court before this time; that the defendants in said cause reside in several distinct localities, to wit, at Waco and Galveston, Texas, and Selma, Alabama—the said Lapsley, the principal defendant in interest, being most of said time, and believed to be now, in the city of New York, on public business; that it has been necessary, for information, to correspond with each of said defendants several times before completing their answers; that sources of information were in Alabama and in various parts of Texas, and the gathering of the facts together has taken up the time; that the answers of Frow and Plattenburg, and

that of Lapsley, and comprizing in all over 100 pages, prepared
37 from memorandums furnished by them, was completed and forwarded to them by mail at Selma, Alabama, at a date of which I have no memorandum, and not now recollected, but over two weeks ago, and in time, if said parties were in Selma, for it to have reached them and been acted on and returned here before this time; that, when said answer was mailed, I requested and instructed the agents of the parties at Selma to correct the same, fill in blanks, &c., and return the same to me, to be forwarded with the answer of defendant Watrous, and filed in court; that said Lapsley was called about a month ago to New York on public business, and this affiant believes he has not yet returned to Selma, and that it has been necessary to send said answers to him, at New York, for his affidavit to it, &c., etc.; that this affiant states this fact, regarding the absence in New York of said Lapsley, from information derived in a letter from said Lapsley, stating his being called to New York suddenly on public business, and that he should leave immediately, and requesting the answer be sent him for his action at the earliest possible moment, as it might be necessary to forward the same to him at New York, and that he had made arrangements for the same, if he failed to return in time.

This affiant further states that every exertion has been employed, and every diligence has been used that was possible, to have said
38 answer prepared and filed in court by the first day of August next, but from no fault of the said defendants, or of this affiant, has it been possible to do so; but the delay was occasioned entirely from the impossibility in time of gathering the facts to frame the answer; wherefore he asks that time for the filing of said answer be extended to the rule-day in September next, and is willing, if it is desired by the complainant, that the answer, when filed, shall be as of the rule-day in August next, so as not to in any manner delay the ultimate trial of this cause.

T. J. LEAGUE.

Subscribed and sworn before me July 22, 1868.

N. D. JOHNSON,
*U. S. Commissioner for Eastern Dist. of Texas.*

Filed July 25, 1868. M. Hopkins, clerk.

And afterwards, to wit, August 4th, 1868, the following entry of order appears upon the minutes:

*Order of court on motion to extend time.*

DE LA VEGA *vs.* LAPSLEY ET AL. } No. 37. In chancery.

AT CHAMBERS, *Austin, August 4th*, 1868.

The motion of the defendants John W. Lapsley, John C. Watrous, Thomas J. Frow, and Westley Plattenburg, in connection with the affidavit of T. J. League, all filed on the 25th ult., having been read and considered, and arguments of counsel heard thereon, it is ordered by the court that said defendants have until the rule-day in September next in which to file their answers to the bill of complainants in the above cause.

It is further ordered that the motion to enlarge the time of answering, on behalf of defendants James E. Harrison and E. J. Gurley,
39 be overruled for want of any sufficient or satisfactory showing therefor.

T. H. DUVAL,
*U. S. Judge.*

Filed and entered August 4th, 1868. M. Hopkins, cl'k.

And afterwards, to wit, at rules of September, the following entry, of judgment pro confesso, against defendants Renick, Frow, & Plattenburg appears upon the rule-book:

*Pro confesso as to Frow, Plattenburg, &c.*

In the circuit court of the United States for the western district of Texas, at Austin.

DE LA VEGA *vs.* LAPSLEY ET AL. } No. 37.

Tomas de la Vega, the complainant in this cause, takes his bill of complaint pro confesso, against the defendants S. H. Renick, Thomas J. Frow, and Westley Plattenburg, each of said defendants having failed to answer.

ALEXANDER,
*Solicitor for Complainants.*

At Sept. rules, Sept. 7, 1868. M. Hopkins, clerk.

And afterwards, to wit, November 2d, 1868, the complainant filed and was entered the following motion, to make absolute the pro confesso taken at September rules as to Thomas J. Frow, Westley Plattenburg, and S. H. Renick, which motion is in words, to wit:

40 *Notice to make absolute.*

NOV'R 2, 1868.

BETWEEN TOMAS DE LA VEGA, COMPLAINANT, *and* JOHN W. LAPSLEY AND OTHERS, DEFENDANTS. } In chancery. No. 37.

In the circuit court of the United States for the western district of Texas, at Austin, at November rules, A. D. 1868.

Tomas de la Vega, the complainant in the above-entitled and numbered cause, by his solicitor, refering to the various orders and papers of said cause in support of this motion, moves that the orders or decrees, taking the bill of complaint therein pro confesso, against the defendants Thomas J. Frow, Westley Plattenburg, and S. H. Renick, be ordered to be made absolute at the rule day in December next, or as soon thereafter as may be practicable, at which time this motion, of course, is set for hearing; each of said defendants being in contempt for want of an answer.

Nov'r 2, 1868.

ALEXANDER,
*Solicitor for Complainants.*

And afterwards, to wit, at December rules, the following entry appears:

*Entry.—Rules.*

DEC'R 7, 1868.

TOMAS DE LA VEGA
*vs.*
LAPSLEY ET AL. } No. 37.

And now comes the defendant, Thomas J. Frow, herein, and files his motion to postpone the hearing of motion of complainant to make the judgment pro confesso (heretofore entered) absolute as to this defendant, until the rule day in January next.

WALTON & DE NORMANDIE,
*Solicitors.*

M. HOPKINS, *Clerk.*

41 On the same day, to wit, December, 1868, the motion of defendant Thomas J. Frow, for a postponement of the consideration of the motion of complainant to make the pro confesso absolute as to him, which motion is in words, to wit:

*Motion of defendant Frow to postpone the hearing of compl's motion to make pro confesso absolute.*

In circuit court U. S., west. dist. Texas.

TOMAS DE LA VEGA
*vs.*
JOHN W. LAPSLEY ET AL. } No. 37. In chancery.

And now comes the defendant Thomas J. Frow, one of the defendants in this cause, and moves the court to postpone the consideration of the matter to make the judgment pro confesso, taken against him, absolute, which motion was made 2d day of Nov'r, 1862, and set for hearing at Dec'r rules, or as soon thereafter as practicable; and, for cause of this motion through his solicitors, he says to the court:

1. That he has been engaged for the last twenty days in the city of New Orleans, in the presence of his solicitors, W. P. de Normandie and W'm G. Hale, in preparing his answer to the bill of complaint in this case, and that his said answer was mailed on the 3d of December, 1868, at New Orleans, directed to his solicitors at the city of Austin, but that said answer has not yet reached the hands of W. M. Walton, or Walton & De Normandie, his solicitors, at said city of Austin.

2. That he has prepared an affidavit making a showing for the failure to make answer to the bill of complaint at the time, and up to the time, and since the time, to which time was extended to him in which to make answer to said bill of complaint, and he here refers to the orders of court granting him extension of time in which to answer; that he believes that by his said affidavit, making a showing for his de-
42 lay in answering he has fully accounted for said delay, and fully purged himself from any contempt of this honorable court, and from even any apparent contempt.

3. That this motion is not made for delay, but that the merits of the case may be reached by proper pleading by answer, and the cause speeded to an issue.

4. That by the next rule day, January, 1869, defendant will have in court his said showing for the inspection of the court, and by his said answer for the inspection of counsel and the action of the court.

5. That he does not believe that justice can be administered or the equity of the case reached by hearing this motion at the rule day, or prior to the coming in of his said answer, and his showing accounting for delay, answering and purging himself from contempt or apparent contempt of court.

For all of which reasons and for each of them, he asks the postponement of the motion to make absolute the judgment pro confesso taken against him.

WALTON & DE NORMANDIE,
*Sol's for Def't.*

U. S. AMERICA, *West. Dist. of Texas, at Austin:*

W. M. WALTON, one of the solicitors for def't Thomas J. Frow, being duly sworn, makes oath that he is informed by his co-solicitor, W. C. De Normandie, who is now in New Orleans, and has been for the last twenty days and more in consultation with W. G. Hale, esq'r, one of defendant's solicitors, the defendants Westly Plattenburg, Thomas J. Frow, and John W. Lapsley, preparing their answers to the bill of complaint in this case, and in making a showing for the said Frow,
43 accounting for his delay in answering the bill of complaint; that the several points in the foregoing motion, are substantially true, and that he, affiant, believes them to be true.

W. M. WALTON.

Sworn and subscribed before me this 7th day of December, 1868.
M. HOPKINS, *Clerk.*

And on the same day the complainant filed the following motion for attachments, and to make pro confesso, absolute.

*Motion of complainants for attachment, & to make pro confessos absolute.*

In the circuit court of the United States for the west. dist. of Texas, at Austin, at December rules, 1868.

BETWEEN TOMAS DE LA VEGA, COMPLAINANT, *vs.* JOHN W. LAPSLEY & OTHERS, DEFENDANTS. } No. 37.

Tomas de la Vega, the complainant in the above-entitled and numbered cause, by his solicitor, moves the court to order that an attachment for contempt be issued against defendants Renick, Lapsley, Plattenburg, Frow, Gurley, and Watrous, for the following causes, to wit:

First. Because each of said defendants, after having entered his appearance in said cause, has failed to file any responsive and sufficient answer unto the bill of complaint therein; but, on the contrary, has only attempted to rely on an imperfect, irresponsive, insufficient, and impertinent answer, which is no answer, and which is not before the court.

Second. Because each of said defendants has neglected and failed to comply with each of the several orders taken at rules in said cause, and specially such as relate to costs.

Third. Because the pretended answers aforesaid have been filed in such a manner, and at such time, and are so imperfect,
44 especially as to the jurats or affidavits to the pretended answers of defendant Lapsley, as to show that on the face thereof, they, and each of them, amount to a contempt of court.

Fourth. Because of other causes apparent from the papers on file in this cause, or referred to by said defendants, and not filed, and from the

record thereof, as well as from the public documents in the bill interlined, and the other public documents having relation to this cause, to which, together with such other papers as may be adduced at the hearing of this motion in support thereof, reference is made.

This motion being set for hearing on the first Monday of January next, or as soon thereafter as the court may order.

ALEXANDER,
*Solicitor for Claimant.*

And on the same day, to wit, December 7, 1868, complainant filed the following motion for a decree:

*Complainant's motion for a decree.*

In the circuit court of the United States for the western district of Texas, at Austin, at December rules, A. D. 1868.

BETWEEN TOMAS DE LA VEGA, COMPLAINANT,
*vs.*
JOHN W. LAPSLEY ET AL., DEFENDANTS. } In chancery. No. 37.

Tomas de la Vega, the complainant in the above-entitled and numberd cause, by his solicitor, moves the court for a decree against the defendants Renick, Lapsley, Plattenburg, Frow, Lapsley, and Watrous, on the calling of the chancery docket at the next term of this court, or as soon thereafter as the court may deem advisable; and complainant refers, in support of this motion, the record in this cause, and to all papers that may have been filed therein, and sets this motion for next rule day, Dec'r 7, 1868.

ALEXANDER,
*Solicitor for Compl'ts.*

45 And on the same day, to wit, December 7th, 1870, the following order and entry appears upon the chancery minutes.

*Order of court upon foregoing motion.*

AT CHAMBERS, *Austin, Dec'r* 7, 1868.

DE LA VEGA
*vs.*
LAPSLEY ET AL. } No. 37.

Motion to render pro confesso against Lapsley absolute.

DE LA VEGA
*vs.*
LAPSLEY ET AL. } No. 37.

Motion to make pro confesso absolute as to defendants Thomas J. Frow, Westly Plattenburg, and S. H. Renick.

It is ordered that the two above motions, made by complainant, and filed Nov'r 2d, 1868, be taken under advizement, and that the clerk set them down for hearing on the first Monday of January next, or as soon thereafter as the court can act upon them.

T. H. DUVAL,
*U. S. Judge.*

Teste: M. HOPKINS, *Clerk.*

And afterwards, at rules, Jan'y 4th, 1869, the following entry appears upon the rule book :

*Setting down for hearing at rules.*

In chancery. January rules, January 4, 1870.

BETWEEN TOMAS DE LA VEGA, COMPLAINANT,
*and*
JOHN W. LAPSLEY ET AL., DEF'TS. } In chancery. No. 37.

In the circuit court of the U. States for the western district of Texas, at Austin.

In the above-entitled and numbered cause, the complainant, Tomas de la Vega, by his solicitor, by leave of the judge, and on notice to W. M. Walton, esq'r', one of the counsel of defendants, sets each and all of the several motions of complainants, which were heretofore set for hearing on this day, for hearing on Monday next, 11 inst.

Jan'y 4th, A. D. 1869.

ALEXANDER,
*Solicitor for Compl'ts.*

Teste: M. HOPKINS, *Clerk.*

46 And afterwards, to wit, on February 7, 1870, the following entry appears upon the minutes of the court of chancery :

*Order making pro confesso absolute as to defendant Frow.*

U. S. circuit court, Austin, Texas,

FEBRUARY, *Monday*, 7, 1870.

DE LA VEGA
*vs.*
LAPSLEY ET AL. } No. 37. Ch'y.

At the September rules, 1868, the complainant took a decree pro confesso against the defendants Frow and Plattenburg, for want of an answer. On the rule day, in November, 1868, the complainants moved to have these decrees pro confesso made absolute at the rule day, in December next thereafter, or as soon as might be practicable, &c. At the same time, Plattenburg, without leave of the court, filed with the clerk his answer to the bill, and moved, for reasons set forth in an affidavit filed with said motion, that the decree pro confesso be set aside.

At the December rules thereafter, Plattenburg moved the court to postpone the consideration of his motion to set aside the pro confesso, as to him, until the January rules thereafter, for certain reasons contained in said motion, and which motion was granted by the court, on the 11th of January, 1864, (no further action having been had ;) Plattenburg filed affidavits, setting forth further reasons for not having put in an answer in time, and, at the same time, defendant Frow filed his affidavit in excuse for his own omission to answer.

No motion was ever made to set aside the pro confesso as to Frow, and I do not see how, under such circumstances, and after the com-

plainant had moved to have the pro confesso as to him made absolute, the court can now take into consideration the affidavit thus filed by him.

47 In the present attitude of the matter, it seems to me the complainant's motion, as to him, should be sustained, and it is so ordered.

While the showing of defendant Plattenburg, excusing himself for not answering in the time required by law, is not altogether satisfactory, yet I believe it is sufficient to authorize his answer to be now filed upon terms.

It is therefore ordered that he now have leave to file the same, and that the decree pro confesso as to him be set aside, upon condition that he pay all costs that can be properly taxed against him as a defendant in this cause, since the commencement thereof, on or before the rule day, in March next.

T. H. DUVAL,
*U. S. Judge.*

And afterwards, to wit, on the 16th day of February, A. D. 1870, the defendant Thomas J. Frow filed the following motion:

*Motion of def't Frow to set aside the decree of 7th Feb.*, 1870, &c., &c.

(Endorsed:) No. 37. La Vega vs. Lapley et al. Motion by defendant Frow. Filed Febr'y 16, 1870. M. Hopkins, clerk.

And endorsed:

To the compl't, or to W'm Alexander, Esq':

This motion is set for hearing on Monday 21st inst., or as soon thereafter as practicable.

WALTON & DE NORMANDIE.

And which said motion is in words, to wit:

48 United States circuit court, western district of Texas, at Austin.

TOMAS DE LA VEGA
*vs.*
J. W. LAPSLEY ET ALS. } In chan'y. No. 37.

And now comes the defendant Tho's J. Frow, by solicitors, and moves the court to set aside the order of court of date the 7th February, A. D. 1870, ordering the judgment pro confesso taken against him on the 7th day of September, 1868, to be made final, as also to set aside and hold for naught the said judgment pro confesso itself, on which the order of the court aforesaid, of date the 7th day of February, 1870, is founded, and for cause of this motion it is respectfully shown the court:

1. The facts sworn to by Westley Plattenburg, in his affidavit of date the 2nd day of December, A. D. 1868; which affidavit is herewith presented and asked to be considered in connection with and in support of this motion, as Exhibit No. 1.

2. The matters and facts set forth and sworn to in the affidavit of him, the said Thomas J. Frow, of date the 12th day of November, A. D. 1868; which affidavit is herewith presented and asked to be considered with and in support of this motion, as Exhibit No. 2.

3. The affidavit of W. M. Walton, one of his solicitors, of date the 16th day of February, 1870; which affidavit is herewith presented

and asked to be considered in connection with this said motion, as Exhibit No. 3.

4. The written answer and all the facts therein stated of the said Thomas J. Frow; herewith presented to the court and asked to be taken in connection with and in support of this motion, as Exhibit No. 4.

And for further ground for granting the prayer of this motion, he shows to the court:

5. That the said motion to make the said judgment pro confesso final was never heard by the court, and this defendant was given no opportunity to interpose his objections to the granting of said motion; that the last action of the court had in regard to said motion was to postpone the same for the purpose of enabling this def't to get in his showing accounting for the delay in the coming in of his answer; that said showing did come in, consisting of the three first papers herein referred to, which said papers would have been interposed on the trial of said motion.

6. That said motion to make said judgment pro confesso final can only be heard in open court during term time, when in fact, if submitted by comp't at all, such submission was out of term time, and the same was considered by the court without a due hearing given this defendant, to interpose his showing why the said motion should not be made final.

7. That he believes that he has a meritorious and sufficient defence to the matters and things set up in complainant's said bill of complaint.

8. That if said order of the court is permitted to stand, great injustice will be done to defendant, in that without a hearing, he will be concluded in material right and valuable interest, when to the claims as set up against him he has a good and sufficient equitable defence, which can and will be set up on opportunity being given to do so.

9. That he has sufficiently accounted for the delay in the bringing in of his answer.

10. That if the said order making the judgment pro confesso final is permitted to stand and remain of force, this defendant will stand concluded in this jurisdiction, while he has a good and sufficient defence never heard by the court, because the weakness and infirmity of body of the defendant prevented him from making it known to the court at an earlier day.

11. That the granting of said order to make the judgment pro confesso was and is illegal, irregular, and not in accordance with law.

For the reasons and the facts given and shown, defendant prays, as stated in the introduction of this motion, and asks for relief on such terms as the court may deem just and right.

WALTON & DE NORMANDIE,
*Solicitors for Def'ts.*

The affidavit of W. Plattenburg is endorsed: Filed *filed* January 11, 1869—M. Hopkins, clerk—and is in words, to wit:

*Affidavit of Plattenburg.—Exhibit No.* 1 *of def't's motion.*

In the circuit court of the United States, western district of Texas, at Austin.

TOMAS DE LA VEGA
*vs.*
JOHN W. LAPSLEY ET AL. } No. 37. In chancery.

Westley Plattenburg, one of the defendants in the above-entitled

cause, being duly sworn according to law, says on oath that his answer in the above cause was not filed at the September rules, because he was informed by Thomas J. Frow, one of the defendants in said cause, that J. W. Lapsley, esq., in whom the legal title to the land in controversy is vested, intended to answer the same, and that his answer would be sufficient for said Frow and affiant, as they had only equitable title to said land. As affiant understood the said Frow, he got his information from Mr. Lapsley, but had undoubtedly misunderstood the said Lapsley, as to the necessity of their answering said bill. Affiant was, and is, almost wholly unacquainted with legal proceedings, and was much su'-prised, when informed, that a decree pro confesso had been taken against him; that his failure to answer said bill arose entirely from his
53 ignorance of legal proceedings, and being wrongfully informed as to the sufficiency of said Lapsley, for the defendants, who had only an equitable title, the legal title to the said land being held for them by said Lapsley; it did not in the least respect proceed from any inclination to act in contempt of said court or with any disregard of the rules thereof; that the said Thomas J. Frow, by whom he could establish the above facts, left his home in Alabama early last summer for Pennsylvania, and for months past, has been, and now is, still in Pennsylvania, detained from his home by serious illness, so that he is now, and for months past, has been, as affiant is informed and believes, too ill to reach his home in Alabama; that affiant deserves to have the decree pro confesso against him set aside, so that he may file his answer in the case, and do all that is in his power to speed the cause. He has no wish for delay further than the ends of justice require.

W. PLATTENBURG.

Sworn to and subscribed before me this 2nd day of December, 1868.
[L. S.] E. WARREN,
*U. S. Commissioner, Dist. of Louisiana.*

54 And filed with said motion and referred to therein.
The following affidavit of Thomas J. Frow was filed.
(Endorsed:) Filed Jan'y 11, 1869. M. Hopkins, clerk. Exhibit No. 2.

*Affidavit of Thomas J. Frow.—Exhibit No. 2 of aforesaid motion.*

In the circuit court of the United States, western district of Texas, in chancery.

Affidavit of Thomas J. Frow, disclosing the facts and circumstances which occasioned the delay in filing the answers herewith annexed earlier.

In the foregoing separate answers in the above-stated case, this defendant Thomas J. Frow begs leave to submit the subjoined affidavit as supplementary and explanatory of his failure to prepare and file them at an earlier period. The facts constituting my excuse are:

First. My being misled by a remark or remarks of John W. Lapsley, esq, (he being a lawyer in whose legal counsel I had been accustomed to rely, not only in matters in reference to this case, but in other business,) from which I was led to believe that his answer in the case (the legal title to the lands being vested in him) rendered an answer from me unnecessary; or dispensed with the necessity of an answer from me. Mr. Lapsley, too, had been managing this business generally.

55 Secondly. Believing, as stated above, and being in feeble

health, I left Alabama for a northern and healthy climate in Pennsylvania, where I have relations, and where I had been accustomed to resort in the summer, now and then for many years past; that on my journey I was very feeble and weak, and upon my arrival at the place of my sojournment in Pennsylvania, I was confined to my sick room, and remained sick for several months, and was slowly recovering, when informed by letter from Mr. Lapsley that my answer to the bill was necessary, and advising that it be made and filed without delay; and so soon as I could obtain the necessary documents, including a copy of the bill, and the state of my health permitted, I made and herewith forward my answers to be filed.

In conclusion, I aver and state emphatically that my answer has been delayed for the reasons above stated, and had not been delayed or withheld from any contempt of the mandate of the court now brought to my notice, nor from any intention or design to withhold any facts or information touching the matters referred to in the bill of complaint in my power to communicate.

THOMAS J. FROW.

56 STATE OF PENNSYLVANIA, *City of Philadelphia, ss:*

On this twelfth day of November, A. D. 1868, before me personally appeared Thomas J. Frow, to me known, and made oath that the facts set forth in the foregoing affidavit subscribed by him are true.

THO'S J. FROW.

Sworn and subscribed before me this twelfth day of November, A. D. 1868.

[L. S.] CHARLES H. T. COLLIS,
*Commissioner for Texas, in Philadelphia, Pa.*

57 Filed Feb. 16, 1870.

M. HOPKINS, *Clerk.*

*Exhibit No. 3.—Affidavit of W. M. Walton, solicitor.*

In U. S. circ't court, western dist. of Texas, at Austin.

TOMAS DE LA VEGA
*vs.*
JNO. W. LAPSLEY & OTHERS. } No. 37. Chancery.

W. M. Walton, one of the solicitors for def't Tho's J. Frow, in the above-stated case, being duly sworn, states that he has been solicitor in this case since the fall of A. D. 1868; that he knows what the progress of the case has been; that the motion made 2nd Nov'r, 1868, based on the judgment pro confesso of date 7th Sept'r, 1868, against the def't Tho's J. Frow, and set for hearing at Dec'r rules, A. D. 1868, or as soon thereafter as practicable, was never, as he believes, heard by the court, save as submitted by the complainant, on the 3rd day of May, A. D. 1869; that he believes that said motion could only be heard by the court in term time; that the said motion was never, as he believes, called up & heard in term time by the court; that he, in behalf of the said Frow, has had in his possession the several papers referred to in the motion to which this affidavit is made an exhibit, ready to in-

58 terpose them at the June term, 1869, & at each term of the court since then, as sufficient reason why said motion should not be

granted in the event it was called up for action; that he deposited the said papers with the court during the present term of the court for inspection, but he believes that the court did not consider the same, owing to the fact that no motion was pending to set asside the said judgment pro confesso; that he believes that such motion could not properly be made, until after the court passed on the motion to make said pro confesso judgment final; that he believes that the said Tho's J. Frow has a good & sufficient equitable defence to the right set up by complainant in his said bill, and that such defence can be manifested to the court, and established to its satisfaction, if permission is given to file an answer and bring in the proofs that are attainable; that if he, affiant, was in error as to the correct practice as to when to bring in a motion to set aside the said judgment pro confesso the error came from the ignorance of affiant, & he does not believe it just or equitable that the said def't Frow should be so prejudiced by such error as to have said final judgment stand against him, especially so when it is believed that he has a good and sufficient defence to the bill of complaint.

W. M. WALTON.

Sworn to and subscribed before me this 15th July, A. D. 1870.

T. H. DUVAL, *U. S. Judge.*

58½ *Exhibit 4.—Answer of Thomas J. Frow.*

In the circuit court of the United States, western district of Texas.
In chancery.

The seperate answer of Thomas J. Frow, one of the defendants to the bill of complaint of Thomas de la Vega, complainant, against John W. Lapsley, Westley Plattenburg, Thomas J. Frow, Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Rennick, J. B. Earl, Edward Kellum, W. R. Kellum, and John C. Watrous, defendants.

This defendant, now and at all times heretofore, saving to himself all and all manner of benefit or advantage of exception or *other* otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, now answering, says, that the seperate answer of John W. Lapsley, his co-defendant, sworn to by him on the day of , 1868, and the seperate answer of Westley
59 Plattenburg, his co-defendant, sworn to by him on the day of , 1868, and heretofore filed in this cause, and that he is well acquainted with all that is stated in said answers of John W. Lapsley and Westley Plattenburg, from having been associated with them in interest, and constantly coöperating with them in reference to the subject-matter of this cause, so that the knowledge, information, and belief, views, purposes, motives and acts of said Lapsley and Plattenburg, have been, in fact and substance also, his own, and therefore adopts the answer of John W. Lapsley and Westley Plattenburg as his answer, and craves leave to refer it, and have it considered as making a part of the present answer, except as may be otherwise hereinafter stated.

And further answering, this defendant more particularly says, on information and belief, that it is not true that the complainant was, on

the fourth day of October, 1833, invested with the title, or possession of the tract of land described in said bill of complaint, in his own right, or for himself, but he held such title and constructive possession, only in the name, and for the real use and benefit of Stephen F. Austin, who had, in the year 1832, purchased all his right, title, and interest in
60 any land *and* granted in his name on the concession made to him; and also, it is not true that he has ever been in actual corporal possession thereof since said day, but the possession has been held by others; and also, that it is not true, that he has never alienes said land, or that said tract is worth three hundred thousand dollars.

And further answering, this defendant says positively and of his own knowledge that he never had notice or knowledge of any fact, showing that the title to said land was in said complainant before or at the time he acquired his own interest in it; and he never conceived any design of defrauding the complainant out of said tract, or in any manner, and he never conspired or confederated with anybody to injure said complainant, or deprive him of anything; on the contrary, he never knew the complainant personally, nor heard that he was in existence until long after he had acquired his interest in said land, and he had no purpose, design, confederacy, conspiracy, or any other thing in his mind in relation to him or anything that was his; all the allegations con-
61 tained in the bill of complainant charging him therewith, or with the knowledge of any forgery, are malicious and intentionally false.

And this defendant, further answering, says that as to the circumstances which led to the purchase of said tract of land by said John W. Lapsley, in which this defendant was invested, and as to different paper writings constituting the chain of transfer, down to said Lapsley, he refers to the answers of said Lapsley before mentioned, and adopts the statements in relation thereto, therein contained.

And this defendant, further answering, says that as to the release of the warranty given originally by Thomas M. League, and as to the acts of Robert Hughes in obtaining from the general land office the testimonio of the power of attorney granted by the complainant with others, to Samuel M. Williams, and authorizing the latter to sell the land mention'd therein; and as to steps taken on the part of said Lapsley and those interested with him to prove said testimonio was a genuine and valid instrument, when it was attacked by third parties holding adversely to said Lapsley, under other claim of title to said land;
62 and as to the disposition of the interest of their co-defendant, Hon. John C. Watrous, and as to any searches or researches at Saltillo, he refers to the answer of said Lapsley before-mentioned, and adopts the statements in relation thereto, therein contained.

And this defendant, further answering, says that he does not know whether the said complainant was, or now is, an "alien friend" to the United States and requires proof thereof, if the fact becomes material; that this defendant cannot admit that he ever was the "public enemy" of the United States, and although he admits, and avers that, by judgment of a district court of the State of Texas of competent jurisdiction, and by the consent of an attorney of that court, who represented said complainant, the claim or pretence of a claim to portions of said land formerly set up in the complainant, was extinguished, he positively denies that this was done for the purpose of injuring the complainant, or from any unfair motives; on the contrary, this defendant and those acting with him, believe that the complainant had freely consented thereto, and was properly represented by his said attorney.

63 And this defendant further says, on information and belief, that the present cause was not instituted for the benefit of said complainant, but was instituted by and for the benefit of one Simon Mussina and William Alexander, esq'r., the solicitor who signes the bill, both of whom claim an interest under a power of attorney said to be given to said Mussina by complainant; and he therefore denies that said complainant was himself injured by said judgment, and insists on the positive proof that he has authorized a denial of their validity or effect.

And this defendant, further answering, says that he has not in his possession any letters, papers, or memoranda proving the truth of any of the allegations of said bill not herein admitted, so far as he knows or believes.

And this defendant, now proceeding to answer such of the special interrogatories contained in said bill of complaint as he is thereby required to answer, and, answering, says:

To the first interrogatory, defendant, answering to the best of his knowledge, remembrance, information, and belief, says that the legal title claimed to be held by defendant Lapsley, as stated in the bill
64 of complaint, by conveyance from League, does not, for its validity, depend solely on the "testimonio" in said bill mentioned. On the contrary, such legal title is also based on the fact of the sale of said land by said complainant to Stephen F. Austin, in the year 1832, to secure which sale said testimonio was to be issued; on the abandonment and laches, delay, and neglect of complainant in setting up his present claim, amounting to an admission that he had aliened said lands; on the fact of adverse possession of said Lapsley by his agents, and the possession of those under whom he claims for the time, and under the circumstances required by the law to acquire a title by limitation or prescription; on the judgments of the circuit court of the United States for the eastern district of Louisiana, and the Supreme Court of the United States; on the judgment rendered by the proper district court of Texas while the said complainant was represented by his attorney; and on many other facts and principles of law which will appear on the hearing of this cause.

To the 2nd interrogatory, respondent, answering to the best of his knowledge, remembrance, information, and belief, says that said
65 testimonio was not believed, suspected, or known by this defendant, or any of his codefendants, to be a forgery at or before the conveyance by League to Lapsley, nor is it now. The covenant of warranty was inserted because League was not then known to Lapsley and those interested with him, and because they were not acquainted with the land titles or land law of Texas, nor with the facts in relation to title to this land. League was released from the warranty because, when they became afterwards better acquainted with him, they were convinced that he had not deceived or misled them, and they were satisfied, from the decisions of the courts and careful examination of all the testimony, that they could sustain their title to the land.

To the third interrogatory, respondent, answering to the best of knowledge, remembrance, information, and belief, says that he does not know what sea'ches, if any, were made in any of the offices in the city of Saltillo, but he never was informed by any agents *by any agents* employed by him, nor does he believe that said testimonio was a forgery; he does not know whether the original of which it purports to be
66 the testimonio was or was not actually signed by said complainant, but, as this defendant is informed and believes, that he had parted with his interest to Stephen F. Austin before the date of such

original, he pursumes that he either signed said original, as he should have done, or accident'ly omitted to do so; and if, in fact, he signed said original, and has afterwards altered it, or consented to its alteration, then he has been guilty of a forgery, and this defendant desires the truth of the facts to be known.

But whether he signed the said original or not, he consented, as this defendant is informed and believes, to the issuance of said testimonio; and this defendant knows nothing of the remainder of said interrogatory, nor does he know what alcabala is.

To the fourth interrogatory, respondent, answering to the best of his knowledge, information, and belief, says that no sum or sums of money have been expended by the defendants, or any of them, in avoiding to do anything refer'ed to in said interrogatory; but he has contributed his share to the expenditures of about five thousand dollars to establish the genuineness and validity of said testimonio by bringing wit-
67 nesses from Mexico at great expense in order to confront them with opposing parties and counsel, so as to give the latter ample opportunity for cross-examination.

To the fifth interrogatory, respondent, answering to the best of his knowledge, information, and belief, says that said testimonio is in the possession of T. J. League, esq'r.

To the sixth interrogatory, respondent, answering, says that, to the best of his information and belief, said testimonio was placed on record in McClellan County at the instance of said Lapsley, or his attorney, on the 9th day of September, 1856, on the proof of Juan N. Seguin and James Hewitson. This defendant does not know whether it had been previously recorded in any other county, but it had been filed in the general land office of the State of Texas, as this defendant is informed and believes, from the year 1858 to the 18 day of December, 18(4)54, when it was withdrawn by the attorney of said Lapsley to be put on record, and to be used in various suits.

To the seventh interrogatory, respondent, answering to the best of his knowledge, information, & belief, says that said testimonio is of
68 record in Falls County and also in other counties; it was recorded in Falls County on the 6th day of October, 1859, at the instance of the attorney of said Lapsley, and upon the proof before stated, and also on the additional authentication and proof of Juan Gonzales, the officer issuing said testimonio, as will more fully appear by said testimonio and the authentication and proof annexed thereto, when produced. The proof by the said Gonzales differed from the former proof only in being more exact and specific, and in the fact that said Hewitson had stated in his authentication that said Gonzales was dead, a mistake occasioned, as the defendant is informed and believes, by a false report of that character, which came to said Hewitson in his absence from Saltillo.

To the eighth interrogatory, respondent, answering, says that he has no personal knowledge of the original of said testimonio, whether it does or does not contain the signature of complainant. If it does not, this defendant believes that the omission was occasioned either by the negligence and fault of said complainant, or by the erasure and
69 obliteration of said signature subsequently. He has never stated, as far as he can recollect, that it did not contain his signature, and he has never changed any opinion that he had on the subject, as far as he can remember.

To the ninth interrogatory, respondent, answering to the best of his knowledge, information, and belief, says that between five and six thou-

sand dollars was expended by said Lapsley and those interested with him, in bringing witnesses from Mexico to New Orleans, to prove the genuineness and validity of said testimonio, in order to confront said witnesses with the opposing parties and their counsel, and allow the strictest cross-examination.

To the tenth interrogatory, respondent, answering, says that, to the best of his knowledge, remembrance, information, and belief, the said Lapsley and those interested with him, did pay out about the sum, and in the manner stated in said interogatory, to prove said testimonio was a genuine document, and they did so prove it.

To the eleventh interrogatory, respondent, answering to the best of his knowledge, information, and belief, says that the statement in the
70 bill that the said John Treanor was sent to Saltillo by defendants to procure proof of the validity of said testimonio is true, and that he was accompanied, as far as Monterey, by T. J. League, and took with him said testimonio, and that said Treanor and Thomas M. League paid for said Lapsley to said Gonzales about thirteen hundred dollars and his expenses, to compensate him for leaving his business and going to New Orleans, so as to be cross-examined by the opposing parties fairly and honestly, are true. This defendant has no knowledge or information on which he can found a belief whether or not said Treanor examined the archives in Saltillo, or whether he procured a copy, photograph, a daguerr'otype of said original of said testimonio, but he presumes that he did not obtain such photograph or daguerr'otype. It is not true that said Treanor omitted to testify. He testified and was cross-examined in the same case on the same occasion with Gonzales. It is true that said Treanor did not take the deposition of Gonzales, but that said Gonzales was taken to New Orleans, and his deposition was then taken, as
71 he was the person who authenticated said testimonio. Whether said Gonzales inspected the original for the purpose, respondent has no knowledge or information, nor can he form any belief either way. It is true that the original was not before him when he testified in New Orleans. It is not true said Gonzales was induced to go outside of Mexico and prove up said testimonio to prevent him from being punished by the laws of Mexico for false swearing, or in order to prevent him from examining the original and swearing the truth, or to prevent notice to, or counsel knowledge on the part of the complainant. Respondend admits that from five to six thousand dollars was expended in proving up said testimonio, as previously stated by him, but he positively denies, on his own knowledge as to himself, and on information and belief as to his co defendants, that any sum was expended to avoid acting in good faith or to prove up said testimonio improperly.

To the 12th interrogatory, respondent, answering, says that, to the best of his knowledge, remembrance, information, and belief, the
72 statements in the bill as to conspiracy, common intent, and design of defendants, or to any of them, are in each and every particular not matters of general notoriety. Possibly the statements may be notorious in the little circle of the complainant's confederates and agents and their friends, but these do not constitute the public. No combination, contract, or contracts have ever been made to the knowledge, information, or belief of this defendant between any of the defendants, except as to the respective interest they have in said land, and the adjustment thereof, as stated in the answer of said Lapsley.

To the 13th interogatory, respondent, answering, says that he has no knowledge of the fact, but he is informed and believes that the said Watrous, as district judge of the United States, never decided that said

testimonio was good and valid and admissible in evidence before a jury, or the reverse, but that he did admit it in evidence in the case of Ufford vs. Dykes et al., upon the written agreement of the attorneys of plaintiff and defendants. Respondent knows nothing about who was foreman of the jury on that occasion.

73 To the 14th interrogatory, respondent, answering to the best of his knowledge, information, and belief, says that if all the improvements were removed from said tract, it would probably be now worth about fifty thousand dollars, but could not be sold for that sum, except in small lots and gradually, as it is. With the improvements, and including them, it may be worth nearly one hundred and fifty or two hundred thousand dollars, but these estimates are based only on conjecture and are not reliable as a basis of value. The land is not now saleable. This defendant and those associated with him, have received nothing for the rents and profits, use and occupation, and for timber on said land, since February 1st, 1861. The amount received by said Lapsley and those associated with him, for sales of said land since that day is, he thinks, only one hundred dollars.

To the 15th interrogatory, respondent, answering to the best of his knowledge, information, and belief, says that if all the material statements in said bill were true, said complainant ought not to be

74 entitled to any damages, because he is barred by his delay and by the acts of limitation in recovering the land or damages, and he has not in his said bill accounted for his laches, or set up any exception to the effect of limitation; and as the material statements in said bill are untrue, the complainant is not entitled to recover anything.

To the sixteenth interrogatory, respondent, answering, says that he cannot state, of his own personal knowledge, whether or not the statements in the bill as to the political status of his co-defendants are true, but admits that legally they may be correctly stated.

To the seventeenth interrogatory, respondent, answering, says that he owns and owned one-tenth interest in the tract of eleven leagues of land mentioned in the bill of complaint, excepting so much as had been sold by Mrs. St. John, or afterwards by said Lapsley, as described in his answer, but the legal title thereto is and was vested in said Lapsley, and the legal title of this defendant will not pass to him until after the execution of the trust assumed by him. The manner and time of acquiring such interest is fully stated in the answer of said Lapsley, to which this defendant refers. The consideration was that he bore

75 his share of the purchase-money and expenses. That consideration was paid before he heard or knew of the claim of complainant. No portion of said land has been sold or encumbered by this defendant personally, and as to the other defendants he refers to the answer of said Lapsley.

To the 18th interrogatory, respondent, answering to the best of his knowledge, remembrance, information and belief, says that several judgments have been obtained by or for said Lapsley and for those interested with him, in the circuit court of the United States for the eastern district of Louisana; and, also, in the district court of the State of Texas, for the counties of McClennan and Falls, as this defendant is informed and believes, but he is not advised of the particulars and cannot state, but will procure certified copies and produce them at the hearing. The judgments in the said district courts, as this defendant is informed and believes, were obtained fairly, and not fraudulently and collusively, against said complainant, represented by an attorney chosen and authorized by him. This defendant has not admitted

76 in conversation, or otherwise, that said judgments were fraudulently or collusively obtained, or that said complainant was not duly represented.

And now this defendant, having fully answered the interrogatories addressed to him, further answering in defence to said bill of complaint, says that no case is made by said bill, or can be made by proof of the averments thereof, which is a proper subject of equitable cognizance or relief, or for which the said complainant has not a plain, complete, and adequate remedy at law.

And this defendant further says that the Thomas M. League named in said bill died before the filing thereof, leaving as his heirs Esther Y. League, his widdow, Thomas J. League, Esther A. Wells, married to Clinton G. Wells, and John C. League, a minor, under the guardi'nship of his mother, Esther Y. League, all of whom are citizens of Texas, but not made parties in this cause, wherefore this defendant says that said bill is defective for want of necessary parties, and should be dismissed.

And this defendant further says that he, John W. Lapsley, Westley Plattenburg, James L. Price, and Thornton B. Goldsby, all
77 through said Lapsley, as their representative, and also Thomas M. League and John C. Watrous purchased the tract of land in said bill mentioned for a valuable consideration in money by them, through said Lapsley, then paid, to wit, in the year 1850, in good faith, and believing that the chain or transfer of title from the government, to wit, the State of Coahuila and Texas, down to their vendors, to wit, M. B. Menard and Nathaniel F. Williams, as the vendors of said League, and as to said League as the vendor of said Lapsley, was perfect and valid, and without any knowledge, actual or constructive, suspicion or doubt that there was any imperfecti on in the power of attorney from said complainant to Samuel M. Williams, authorizing the latter to sell said land.

And this defendant further says that the said complainant, if he had any title or claim to said land, had abandoned or lost it before the filing of his bill, by laches and neglect in prosecuting it, and thereby informing and cautioning the public not to purchase said land from a person held out to the world, as authorized by him, to sell it; that said
78 testimonio, as this defendant is informed, was on file in the general land office of the Republic of Texas, in 1833, and thereafter, and was recorded in the counties where the land was situated, in 1856; that the sale to said Lapsley was made in 1850 and recorded in 1851; that the land was publicly represented by said Samuel M. Williams from the year 1833 to 1840 as being for sale, and as in his power to sell, and was known as belonging to Stephen F. Austin; that it was in fact sold to Mrs. St. John, in 1833 or 1834, to raise money for the said Stephen F. Austin, and the deed to her trustees, made in 1840, was then made for greater safety only; that Mrs. St. John publicly exercised acts of ownership over it, and her agents or tenants were upon it; that from July, 1850, to the present time, said land has been in the possession of said Lapsley by his agents and tenants; that said complainant, in case he had been the true owner of said land, would have come forward & protected his interest and asserted his rights; but that till about
79 the year 1859 or 1860, he never asserted any claim or right to said land, and he has never been within the State of Texas to do so; that the only persons now, or at any time, asserting a right in him, are the aforesaid Simon Mussina, a notorious land speculator, and William Alexander, esq., equally noted for his insane prejudices, who have sought to make this claim a support for their attacks upon Hon. John

C. Watrous, to whom they had been inimical on other grounds; that there is nothing to show that this bill, or any other proceedings, have been filed or taken at the instigation of said complainant, but he has been inactive, inert, and indifferent in regard to his alleged claim, from 1833 to the present time; he has paid no taxes on said land, and appointed no agent to take possession, nor asserted any right to it up to 1859, when said Mussina and Alexander claimed to be so appointed; that by his conduct he has virtually affirmed and sanctioned said power of attorney and the conveyances made thereunder, and by his laches he has lost all right to consideration or relief in a court of equity.

And this defendant further says that the right and claim of said complainant accrued, if at all, more than twenty years before the
80 filing of this bill, to wit, from the date of sale by Samuel M. Williams to Menard and Williams, as trustees for Mrs. St. John; and more than ten years before the filing of this bill, if such right and claim is deemed to accrue only from the time when the conveyance from Menard and Williams to said League, and from said League to Lapsley, were put on record, and that such claim is therefore a stale demand, and will not be enforced by a court of equity held in the State of Texas and administering the laws thereof.

And this defendant further says that the said Lapsley, who represents their interest, has, through his tenants and agents, had and held continuous peac'able adverse possession of said tract of land in said bill mentioned, for more than three, five, and ten years before the filing of said bill, holding the same under all the requisites prescribed by the acts of limitation of Texas, as more fully set forth in his answer, to which this defendant refers; and that the said complainant is therefore barred and precluded from commencing or prosecuting this suit by reason of such act of limitation.

81 And this defendant denies all and all manner of unlawful combination and confederacy, wherewith they are, by the said bill, charged, without this, that there is any other matter, cause, or thing in said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein well and sufficiently answered, confessed & avoided, traversed or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and hereby prays to be hence dissmissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THO'S J. FROW.

THE STATE OF PENNSYLVANIA,
*Juniata County, ss:*

Before me, James H. Graham, president *a* judge of the court of common pleas of Juniata County, which is a court of record of the ninth judicial district in and for the State aforesaid, personally appeared Thomas J. Frow, a citizen of the State of Alabama, temporarily sojourning in the State of Pennsylvania, and personally known to me, who, being duly sworn, on his oath says that the matters and things
82 stated in his answer hereto annexed to the bill of complaint of Tomas de la Vega against John W. Lapsley, this affiant, and others, exhibited in the circuit court of the United States, western district of Texas, at Austin, in chancery, so far as stated on his own knowledge he knows to be true, and the matters and things stated on

his information and belief he believes to be true in substance and in fact.

THO'S J. FROW.

Sworn to and subscribed before me this 28th day of April, A. D. 1869.
In testimony whereof I have hereunto set my hand the day and year above written.

J. H. GRAHAM,
*Pres't Judge.*

COMMONWEALTH OF PENNSYLVANIA,
*Juniata County, ss:*

I, George Reynolds, prothonotary of the court of common pleas in and for the county of Juniata, State of Pennsylvania, do certify that the Honorable James H. Graham, by whom the foregoing affidavit and attestation was made, and who has thereunto subscribed his name,
83 was, at the time of making thereof, and still is, president judge of the court of common pleas of the county of Juniata, duly commissioned and qualified, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.
In testimony whereof I have hereunto set my hand and affixed the seal of said court this third day of May, A. D. one thousand eight hundred and sixty-nine.

[L. S.] GEORGE REYNOLDS, *Proth.*

84 *Separate answer of John W. Lapsley refer'd to and made part of the answer of Tho's J. Frow as part of Exhibit* 4.

In the circuit court of the United States, eastern district of Texas. In chancery.

The seperate answer of John W. Lapsley, a defendant, to the bill of complaint of Tomas de la Vega, complainant, against John W. Lapsley, Westley Plattenburg, Thomas J. Frow, Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, J. B. Earle, Edward Kellum, W. R. Kellum, and John C. Watrous, defendants.

This respondent now, and at all times hereafter, saving and reserving to himself all and all manner of benefit and exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill of complaint contained, and especially for want of equity and multifariousness, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for him to make answer to, now answering, saith:

Respondent admits the residence of the parties and the death of said Goldsby, League, and Price, as stated in the bill; and he admits that the complainant was invested with the bare legal title, in
85 the year eighteen hundred and thirty-three, to the said eleven leagues of land mentioned in said bill, situated in what is now known as McLennan County, but formerly Limestone County, in the State of Texas, the equitable and substantial title and right to said land being then in Stephen F. Austin, as hereinafter stated; but this respondent does not admit, but, on the contrary, utterly and absolutely denies the statement and allegations in the third paragraph of said bill of complaint, and in every other part of said bill, to the effect that said complainant "has continued to be seized and possessed of said tract of

land, never having alienated the same from the date aforesaid (4th of October, 1833) until the present time; that he is still so seized and possessed thereof, having good title thereto;" all which respondent denies absolutely, not only as to a portion but to every part and parcel of said eleven leagues of land. And respondent asserts that (as he has reason to believe, does believe, and so avers) the said complainant long ago, much more than thirty years before the exhibition of his said bill of complaint, disposed of and alienated all the right, title, and interest he ever had or possessed in and to the said eleven leagues of land, and every part thereof, and has not since possessed, and does not now have or possess, any just or lawful right or title to the same, or
86 to any part thereof. Respondent admits that a large portion of said tract is of good quality, but is unable to state its value, or that it is now worth as much as three hundred thousand dollars. It was valued at that sum, and more in the year 1861, and several preceeding years; but, as respondent is informed and believes, lands in Texas generally have largely declined in price since the year 1861. The value of said tract has been largely increased by the valuable improvements put upon various portions of it in and prior, and to some extent probably subsequent, to the year 1861, by settlers on, and claimants of, various portions of it holding adversely to said complainant, which improvements respondent avers are worth a large sum of money, but how much respondent is unable to state. Among other valuable improvements, a large and costly brick building, and other improvements, constructed for cotton factory have been erected, and various plantations or farms have been cleared and fenced and put under cultivation, and dwelling-houses and other valuable buildinge have been erected on different portions of said tract; all of which improvements have cost, and are worth a large sum, and have added very largely, but how much respondent is unable to state, to the value of said tract of land. Said improve-
87 ments were not made by respondent or by those identified in interest with him personally, but in some instances by their vendees. Nor has respondent or those identified with him in interest, in regard to said tract, derived any rents, profits, or emoluments on account of said improvements, or for the use or occupancy of said tract, or any portion thereof.

This respondent, further answering, says he admits that he did, in July, A. D. 1850, obtain from said Thomas M. League a conveyance of said eleven leagues of land by a deed of conveyance of that date; which said deed was, at or about that date, duly executed and delivered to him by the said League for a lawful and valuable and sufficient consideration, and was duly recorded in the county of McLennan, in the State of Texas, on the seventeenth day of February, 1851, a full and true copy of which said deed, with the certificates thereon, which respondent avers are genuine and valid, will be, when obtained, hereto attached as Exhibit "A," and prayed to be referred to and taken as a part of respondent's answer.

Respondent avers that the deed of the said League was and is lawful and valid, and invested respondent with lawful and valid indefeasible right and title to the said lands, as therein set forth and designated, to wit, the said eleven leagues; and that he thereby acquired lawful
88 and valid, and indefeasible title to the same, subject, however, to certain equitable rights which had been, prior to the execution of said deed, acquired by certain persons to portions of said tract, from Mrs. Sophia J. St. John, or her authorized agent, as set forth in an instrument in writing, hereinafter referred to, and copy of which is to be attached to this answer as Exhibit B.

The facts touching the execution of said deed, and the acquirement of title thereby by respondent to the land therein designated, are substantially as follows; which statement respondent makes in response to the charges of conspiracy and fraud made in said bill of complaint against respondent and his co-defendants, or a portion of them, in relation to the procurement by respondent of said deed of conveyance from said League, and the claim set up thereunder by respondent.

The said Hon. John C. Watrous, judge, mentioned in the bill of complaint, for a long time resided and practised law in Selma, Dallas County, Alabama, before his removal to Texas; and after his removal to that State sometimes corresponded with respondent, and also with the said Thomas J. Frow, being well acquainted with them. In one of his letters, in the year 1849 or 1850, to respondent or the said Frow, respondent does not remember which, he referred to the said eleven
89 leagues of land, which were then offered for sale, making favorable representations in relation to the same, and proposing to his correspondent to get some of his friends to unite with him and furnish the funds required to purchase said lands, the said Watrous desiring, by the arrangement, to secure for himself an interest in the lands, if purchased, as proposed. The result of this proposition was an interview between respondent and said Frow, Plattenburg, Thornton B. Goldsby, and James L. Price, and in an agreement, which was carried into effect, that the said Frow and Price should visit Texas, (in company with Mr. J. R. Kenan, who was regarded a good judge of lands,) with the view of examining said tract, and of having the titles thereto, as offered for sale, by or on behalf of the said Mrs. St. John, examined and reported upon by a lawyer and counsellor of Texas, to ascertain the character of the said title.

The said Frow and Price, (accompanied by the said Kenan,) visited Texas, as agreed, in the winter or spring of the year 1849–1850, with the understanding that if they reported favorably as to said lands, they and the said Plattenburg, Goldsby, and this respondent would probably furnish the funds to purchase said tract, as was proposed. On their return the said Frow, Price, and Kenan reported favorably and satisfactorily as to the quality of said lands, a large portion of which
90 was represented by them (they having visited the lands and examined various portions of them,) as of good quality. The said Frow and Price also reported to respondent, and said Plattenburg and Goldsby, that they had consulted Judge Robert Hughes (now deceased) in relation to said titles, the said Hughes being represented as one of the ablest and best counsellors in the State of Texas in matters pertaining to titles to land in that State, in which he resided, and had practised law; and that the said Hughes, who had examined said titles, (the title as then claimed to be vested in M. B. Menard and Nathaniel F. Williams, in trust for the benefit of said Mrs. St. John, to said eleven leagues of land,) and advised them that, in his judgment, the said titles were good and valid, expressing no doubt whatever on the subject. This, respondent believes, was prior to the conveyance hereinafter referred to, from the said M. B. Menard and Nathaniel F. Williams, or other party, of the said tract to the said Thomas M. League. In that visit to Texas, the said Frow and Price met with the said League, who accompanied them, as they reported, in their visit to said tract. The said Frow and Price were not authorized to make any contract on behalf of respondent, Plattenburg, and Goldsby, or either of them, but, as respondent understood and believes, made such representations
91 to the said Watrous and League, or to one of them, as manifested

a willingness on their part, and probably on the part of respondent and Plattenburg and Goldsby, to accept the proposition previously made by the said Watrous, to furnish the funds necessary for the purchase of said tract. Some weeks after the return of said Frow and Price from their visit to Texas, the said League and Watrous came to Selma, on their way to the North, and had an interview with respondent and his Alabama associates, said Frow, Price, Goldsby, and Plattenburg; the said League stating that he had purchased the said eleven leagues of land, but had not paid all the purchase-money, on account of which, about five thousand dollars was owing to the said Mrs. St. John. He proposed that respondent and his said associates should advance the amount he had paid, or agreed to pay, for said land, including certain land warrants hereinafter referred to, (and certain expenditures named,) and that if they would do so, they should be entitled to one-half the said land he had purchased, including said land warrants; and that he and said Watrous would execute, for the benefit of respondent and his said associates, their joint promissory note for one-half the amount to be advanced, payable five years after date, bearing interest (8 per cent.) from date, to be secured by lien on the half of said
92 land which was to belong to said League and Watrous. This proposition was accepted by respondent and his said associates, (on the terms and conditions that the said League should convey the said tract to respondent, as was done in and by the said deed of 1st July, 1850, from the said League to respondent,) and that all the parties should execute the written instrument and agreement hereinbefore referred to, a true and full copy of which will, when obtained, be hereto attached, marked Exhibit B, and is prayed to be referred to and taken as a part of this answer.

Thereupon the said League executed the said deed of 1st July, 1850, and he and said Watrous executed their joint promissory note payable to respondent, dated July 1850, payable five years after date, bearing interest from date, at the rate of eight per cent., for four thousand five hundred and thirty-two dollars, being one-half of the amount stated by the said League, which he had paid, or bound himself to pay, for the said lands, including the land warrants or certificates mentioned in said agreement, (Exhibit B,) and certain expenses incurred in relation to the lands; and respondent, as party of the first part, and said League and Watrous, as parties of the second part, and said Frow, Plattenburg, Goldsby, and Price, as parties of the third part, thereupon, on the said day of July, 1850, executed the said instrument and
93 agreement hereinbefore set forth in and by said Exhibit B, which said instrument and agreement respondent avers was and is valid, and in full force according to all the terms and stipulations therein set forth, except so far as the terms thereof have been complied with or performed; and respondent claims and insists upon all his rights and liens provided for in and by said instrument and agreement, and concedes, as he has ever done, all the equitable rights of the persons named in said agreement to the interest in said lands therein mentioned, as having been previously conveyed by the said Mrs. St. John, or her authorized agent, to the persons designated, and to their heirs and assigns; claiming no benefit or advantage for himself, or those associated with him in said agreement, by any legal title held by him to the interests in said tract, (except in and by the terms of said agreement,) from the operation thereof.

At the time of the making of the said deed of July 1st, 1850, respondent suggested what seemed to him a defect in the authentication of the

conveyance of the said M. B. Menard and Nathaniel F. Williams to the said League for said tract, which, with other title papers, was then and there exhibited by the said League; and respondent also suggested that there should be a confirmatory deed directly from the said Mrs. St. John to said League, and executed by herself in person, approving the
94 con'ance from the said M. B. Menard and Nathaniel F. Williams, although not legally necessary, and it was agreed that before the payment of the balance due from the said League to Mrs. St. John or her said trustees, the said Menard and Nathaniel F. Williams, another conveyance of said tract substantially like the one which had been executed, should be executed by the last-named persons to the said League, and a confirmatory deed to the same by the said Mrs. St. John, all to be properly authenticated. This requirement was made, and the desired second conveyance from the said Menard and Nathaniel F. Williams to the said League, bearing date also on the first day of July, 1850, and a deed from the said Mrs. St. John, executed by her in person to the said League, confirmatory of the said sale and conveyance by her said trustees to said League, bearing date the 8th day of July, 1850, were duly executed, authenticated and delivered, copies whereof will be hereto attached, the first named as Exhibit C, and the last named as Exhibit D, and prayed to be referred to and taken as a part of this answer. The said two last-named deeds having been duly executed, authenticated, and delivered as hereinbefore stated, respondent, as he had agreed, paid the balance due from the said League on account of said tract as conveyed to him as aforesaid, something upwards of five thousand dollars, which payment was made to the said Mrs. St. John
95 with the approval of her said trustees. Respondent also paid to the said League, or on drafts drawn or authorized by him, the balance of the amount agreed to be advanced by respondent and his Alabama associates as aforesaid; the said amount being nine thousand and sixty-four dollars or thereabouts, respondent's said Alabama associates providing and contributing to respondent their proportion of said sum.

After the execution and delivery of the two said last above-named deeds, respondent obtained from the said League a second conveyance to himself of the said eleven leagues of land, the same in substance in all respects, if not exactly in the terms of the said conveyances from he said League of July, 1850, respondent desiring and requiring this, thinking it proper, if not necessary, to have a conveyance from said League, subsequent to the execution of the last above-named deeds of the said Menard and Nathaniel F. Williams, and Mrs. St. John—the deed of the latter, as shown upon its face, being executed by her, with the sanction and approval of her husband, Samuel St. John, jr. This was respondent's reason for requiring a second conveyance from the said League, which second conveyance was duly executed by the said League, and bears date . Respondent avers the due execu-
96 tion and validity of all the aforesaid deeds and conveyances.

Respondent, further answering, says: The complainant having assumed and alleged that respondent and his Alabama associates had released the said League from a warranty contained in his said deed of July, 1850, and having charged or insinuated that this was done from some fraudulent or improper motive, or from a consciousness of some original fraud, respondent begs leave to state the facts in relation to said warranty. Respondent being a practising lawyer, at the time said League made his proposition in regard to said tract to respondent and his Alabama associates, the title-documents brought and exhibited by

said League were referred to respondent for examination, his said associates manifesting a willingness to be governed by respondent's action and advice in the premises. The said League professed the most absolute confidence in the validity and legality of his title, and in this he was sustained by the opinion of Judge Watrous, who seemed familiar with the subject, and stated his belief that League's title was indubitably good and valid. Respondent, being unwilling to invest and to advise his friends to invest in lands in a new and distant State, where it was at all likely that any fault existed in the title, or where there seemed any reason to apprehend that the title could be success-
97 fully assailed, and although, so far as he could judge by the title-papers exhibited, a proper chain of title was vested in said League, and he knew nothing tending to impeach its validity; and, although informed of the opinion of Judge Hughes, represented as one of the best counsellors in Texas on such subjects, fully sustaining the title, yet as the said League, up to that time, was an entire stranger to respondent, and the responsibility of deciding in relation to the title resting in him, and as he was not acquainted with the laws of Texas pertaining to lands, which laws were, in some material respects, different from the laws of Alabama, respondent decided not to go into the arrangement proposed, nor to advise his associates to do so unless the said League would exhibit such confidence in his title, and such proof of his sincerity and candor in his strong assurances of the perfect validity of his title, as would be done by executing a conveyance with such warranty as is contained in his said conveyance of July 1st, 1850. He at first, and for some time, objected to giving what seemed tantamount to an absolute warranty in an arrangement looking to a partnership in which he was to have but a fourth interest; but it being declared a sine qua non, he finally yielded his objections, and executed the deed as it
98 now appears. Years afterwards, when respondent and his associates became better acquainted with the said League, and after the title had been assailed in a manner and by means most unscrupulous, as repondent feels justified in declaring, and came out of an ordeal such, probably, as but few if any other titles in Texas were subject to, both before the circuit and Supreme Court of the United States, as in the case of this respondent vs. Elyphus Spencer, vindicated and justified by the deliberate judgement of both these tribunals, then respondent and his associates did whatever was done by them which could be construed into a release of said warranty; and this was done not on account of, or in conformity with, any promise, agreement, or obligation, or understanding, express or implied, on the part of respondent and his associates, or any of them, at the time of the execution of said deed of July 1st, 1850, or at any other time before or after. Nor was it done from any unlawful or fraudulent, or improper motive or purpose. It was done from a willingness or disposition to comply with what, under the circumstances, was regarded as a not unreasonable request on the part of the said League, and was a voluntary act on the part of respondent and his said associates. Had it appeared that said League had acted in
99 bad faith, or otherwise than honestly, in representing said title as good and valid, respondent believes nothing would have been done to change or modify, in any degree, the warranty referred to. His good faith in representing his title to be good and valid, having, as appeared, been amply vindicated, the prominent, if not the only motive which prompted the requirement of the warranty ceased to exist.

This respondent, further answering, says: The said note of the said League and Watrous not having been paid at maturity, was placed in suit

by respondent in the district court of Galveston County, at Galveston; but before judgement thereon the said League departed this life, and the amount due on said note was paid to respondent's attorney by T. J. League, esq., a son of the said Thomas M. League, on behalf of the estate or heirs of the latter, with the understanding and agreement between respondent's attorney and the said T. J. League, with the approval of respondent, that the said T. J. League, on behalf of the estate or heirs of the said Thomas M. League, should be subrogated to the rights of respondent in said suit, so far as might be necessary to collect from the said Watrous, the payment for the benefit of said estate or heirs, one-half the amount of said note and the interest accrued
100 and to accrue thereon, which, as between the said Thomas M. League and the said Watrous, the latter was and is bound to pay: provided that nothing in this arrangement should have the effect to supercede the lien of respondent on the interest of the said Watrous and Tho's M. League in said lands, as security for that portion of the costs, charges, and expenditures which have been or may be made by or on behalf of respondent, or for which he has become or may become liable on account of said lands, as stipulated in the said instrument and agreement, Exhibit B. Respondent has paid a large amount of charges and expenses on account of said lands, and is liable for other charges beyond the amounts contributed by the said Thomas M. League and Watrous. The former paid, or the said T. J. League paid on account of his estate, about one-fourth the amount of the advances which had been made by or on behalf of respondent up to January 1st, 1865, the said Watrous not having paid his quota, which is still unpaid.

Respondent insists on all his liens on said lands and all his other rights in regard to the same, as set forth in said agreement, a copy of which will be attached as Exhibit B, in regard to the interest of the said Watrous in said lands, as well as the interests of all the other parties to said agreement, which liens respondent avers and insists are prior
101 and superior to the pretended right to the interest of the said Watrous in said lands, alleged by complainant to have been acquired by him under and by virtue of a sale under execution issued on a judgement in favour of one Joseph Moreland, & mesne conveyances thereunder as alleged in the bill of complainant.

Respondent avers that the said Watrous possessed no such interest in said lands as was liable to sale under execution, his interest being purely equitable and inchoate, and that no title was or could be acquired by virtue of the alleged sale, under the judgement and execution, in favour of the said Moreland; and that the complainant acquired no right whatever to the interest of the said Watrous in said lands, or any other portion thereof, by any conveyance he may have received, depending upon the alleged sale and purchase under said judgement and execution, as stated in the bill of complaint. But however this may be, respondent states and insists that no right or title which could have been acquired under the said judgement and execution, can supersede, or in any manner affect or impair the aforesaid superior and prior liens of respondent. Respondent begs leave further to state in this connection, that, on the 20th day of February, 1857, he received from said Thomas J. Frow notice of an order drawn upon respondent, by
102 the said Watrous, in the words and figues following, to wit:

"SELMA, *Nov. 7th*, 1856.

"JOHN W. LAPSLEY, Esq.:

"Whenever any amount comes to your hands more than that which is necessary to pay the debt which I owe to you for my share of the pur-

chase of the La Vega tract of land, please pay to Thomas J. Frow, whatever the amount may be.

"Yours truly,

(Signed) "JOHN C. WATROUS."

On which, respondent wrote across the face the following, at the date named, to wit: "Accepted, provided that Judge Watrous's proportion of the expenses incurred and to be incurred, in relation to the land, shall be also retained by me.

"20th February, 1857.

(Signed) "J. W. LAPSLEY."

The said Frow insists, and respondent insists on his behalf, that, under and by virtue of the said order, the said Frow was, and is, entitled to the proceeds of said Watrous, *in trust* in said lands, whatever the same may be, after the discharge and satisfaction of respondent's liens thereon hereinbefore referred to, and the liens rightfully claimed through and under respondent.

Respondent was also notified of an assignment or mortgage, or deed of trust executed by the said Watrous to one Yard or George Butler, of his interest in the said eleven leagues of land, subject to the liens of respondent, and subsequent to the date of the order above copied;

103 the benefit of the said last-mentioned assignment or mortgage, or deed of trust, as the case may be, whether to the said Yard or Butler, (respondent does not remember the facts relating to the same,) respondent is informed is claimed by and on behalf of the said Butler; and herein states and sets up the same on behalf of whomsoever may possess the right, so far as it is lawful and proper that he should do so, and prays that such action may be taken, and such orders or decrees made by the honorable court as may be lawful and proper in the premises, consistent with the liens and other rights of the respondent, and those claiming under him; and, should it be deemed right and proper, respondent prays that he may be allowed hereafter to make a supplemental answer, setting forth more particularly than he is now able to do, the said claim of the said Yard and Butler, or which of them may possess such claim.

Respondent, further answering, says he begs permission to refer to and make portions of his answer the following specified documents and records, with the certificates which may appear thereon; all which, marked as stated in relation to each, whether attached to respondent's answer or filed as exhibits in the office of the clerk of said court at Austin, respondent prays may be taken and referred to as portions of this his answer. To prevent the inconvenient incumbrance of his

104 answer, and delay of the same, he prays that they may, when prepared, be filed in the office of the clerk of said court, as exhibits and portions of respondent's answer, with leave, should it be deemed necessary or proper, to attach the same hereafter, or such of them as may be deemed necessary or proper to the body of respondent's answer; and with leave to produce and prove, if need be, the originals, or such of them as may be deemed necessary or proper, to wit:

First. The testimonio of the power of attorney of the complainant to Samuel May Williams, authorizing the latter to dispose of the said eleven leagues of land, dated 5th May, 1832, hereinbefore referred to, and duly recorded, marked Exhibit CC.

Second. Conveyance of said Samuel May Williams of said eleven leagues of land to M. B. Menard and Nathaniel F. Williams, in trust,

for the benefit of Mrs. Sophia J. St. John, dated May 1st, 1840, marked Exhibit DD.

Third. First conveyance from the said M. B. Menard and Nathaniel F. Williams to Thomas M. League, conveying said lands, dated July 1st, 1850, marked Exhibit E.

Fourth. First conveyance or deed from Mrs. Sophia St. John and her husband, Samuel St. John, by their attorney-in-fact, Jacob de Cordova, to Thomas M. League, dated July 1st, 1850, marked Exhibit F.

Fifth. Second conveyance from the said M. B. Menard and
105 Nathaniel F. Williams to said Thomas M. League, conveying said lands, dated July 1st, 1850, and duly recorded, marked Exhibit C.

Sixth. Deed of Mrs. Sophia J. St. John to Thomas M. League, confirmatory of the sale and conveyance of said land by her trustees, Menard and Nathaniel F. Williams, to said League, dated July 8th, 1850, marked Exhibit D, the two last having been herein previously referred to as Exhibits C & D.

Seventh. Deed from Mrs. Sophia J. St. John, confirming the acts of her attorney-in-fact, Jacob de Cordova, in selling said land, and land scrip, to Thomas M. League, dated August 19th, 1850, and marked Exhibit HH.

Respondent avers the genuineness and validity of the said testimonio, and of all the other deeds or instruments, copies of which are made and referred to as exhibits as above stated, and of all the certificates shown in said exhibits, and that such of the said deeds or other instruments as are stated to have been recorded, or as so shown in the certificates as copied, and appearing on the exhibits respectively, were duly recorded in the respective counties, and at the respective dates stated. And respondent avers that the said testimonio and all the other instruments and deeds aforesaid are in full force and effect, according to the true import and tenor of each, respectively.

Respondent, further answering, begs leave to produce and file,
106 when obtained, in the office of the clerk of said court, at Austin, as exhibits to his answer, and as portions thereof, with leave hereafter to attach the same, if deemed necessary or proper, to the body of this answer, the following duly authenticated exemplifications, to wit:

1st. Exemplification of the records of the proceedings and judgement of the circuit court of the United States for the eastern district of Louisiana, sitting at New Orleans, in a suit tried and determined in said court of this respondent as plaintiff, against one Eliphas Spencer, as defendant, wherein judgement was rendered as therein stated in favor of respondent against said Spencer, marked Exhibit J, the said exemplification being duly certified by the clerk of the said circuit court, as shown thereon.

2nd. Exemplification of the record of the Supreme Court of the United States, showing the proceedings and judgement of the said Supreme Court in the suit last above referred to, which was taken by the defendant therein, by writ of error to the said Supreme Court, and therein determined; and judgement therein rendered as shown in the said exemplification, duly certified by the clerk of said Supreme Court; and to be filed as aforesaid, and marked ○ Exhibit K.

And respondent avers that the proceedings in the said case in the
107 said circuit court of the United States at New Orleans, and in the same case tried on writ of error in the said Supreme Court, had relation to the said eleven leagues of land; that respondent's title to the said land and the validity of his said title, and his possession or

right of possession thereof, were directly involved in said proceedings, and were adjudged and determined in and by said circuit and Supreme Courts, and in and by the judgement rendered in and by said courts respectively, and were determined in favor of this respondent; which said judgements were rendered after full and elaborate examination, and argument of counsel in behalf of the plaintiff therein on the one side, and of the defendant on the other, both in the said circuit and Supreme Courts. Respondent avers that the said exemplifications are true in all things therein set forth, and that both the said judgements are in full force, and he sets the same up as complete and conclusive evidence of his right and title to the said land therein specified; and against all the claims and demands set up thereto or therewith connected in complainants said bill of complaint.

3rd. Exemplification of the record of the proceedings and judgement of the circuit court of the United States for the district of Louisiana, sitting at New Orleans, in a case tried and determined in said court, wherein this respondent was plaintiff, and Mitchell and Warren were defendants; the judgement therein, in behalf of respondent ren-
108 dered as set forth in said exemplification, which respondent avers is true in all things, and duly certified by the clerk of said circuit court, was and is valid, and the judgement therein was and remains in full force. Respondent further avers that the lands mentioned in the said last-mentioned proceedings are the same lands referred to and specified in the complainant's said bill of complaint, and to which he therein sets up and avers claim and title; and respondent avers that the said complainant had notice of the pendency of the said suit against the said Mitchell and Warren, and of the subject-matter thereof, and testified therein voluntarily in behalf of the defendants therein, and against this respondent; and was privy to the proceedings and judgement therein. Respondent sets up the last-mentioned proceedings and judgements as conclusive evidence of his right and title to the lands therein specified, and against the asserted rights and claim thereto of the complainant as alleged in his said bill of complaint, the last-mentioned exemplification marked Exhibit L.

Respondent, further answering, says that, speaking for himself and in his own behalf and knowledge, he denies absolutely and without reservation, and speaking for the other defendants in said bill, and all persons claiming under him, according to the best of his knowledge, information, and belief, he denies absolutely and without reservation,
109 all the statements, averments, charges, suggestions, and insinuations in the said bill of complaint, of any act or design or intention or combination, or conspiracy to injure or defraud the complainant in regard to any lawful or equitable claim, right, or title pertaining to the said tract of land, or any other matter or thing; and respondent pronounces all such and all similar averments, charges, suggestions, and insinuations, whereon and however made, utterly untrue; and respondent verily believes that the complainant, if he really knows the contents of the bill filed in his name, knows all such averments and charges to be untrue, and further, that he well knows that the claims averred and set up in his behalf in said bill are false and fraudulent.

Respondent, further answering, in response to the paragraph in the bill marked firstly, says: Judging from all the knowledge & information he possesses, and from all the evidence he has seen, and from all the facts and circumstances known to him, this respondent verily believes, and to the best of his knowledge, information, and belief avers, that the instrument mentioned and designated in said paragraph, as claimed by de-

fendants as averred in the bill, and is so claimed to be testimonio of a power of attorney from said complainant to Samuel May Williams, dated on the 5th day of May, 1832, empowering said Williams
110 to sell said tract of land, is not a forgery, as averred by the complainant, but on the contrary thereof was and is genuine, and the true and lawful and valid act and deed of complainant, as it purports to be, and was and is binding as such on complainant. And, so far from its being true, as alleged by complainant, that this respondent with other defendants and other persons referred to had full knowledge of such forgery as is in said paragraph alleged, or of any fact or matter rightfully impeaching the validity of said testimonio, respondent avers that every fact known to him at the time of the conveyance to him by the said League of the said tract of land on the day of July, 1850, or previously, and all other facts, evidences, and circumstances touching the said testimonio which have since come to his knowledge, so far from creating the belief or suspicion that the said testimonio was a forgery, or was invalid, or that the complainant had, at the time of said conveyance to respondent, or at any subsequent time, any just and valid claim or title to the said tract of land or any part thereof, tended to convince him, and does convince him of the truth of the direct contrary; and respondent has never doubted, and does not now in the least doubt the absolute genuineness of the said testimonio. And so respondent denies the allegation of the forgery of the said testimonio, and avers its
111 genuineness and validity, and utterly denies the justness and legality of the claims set up in said bill of complaint, and every portion of said claims, notwithstanding what respondent feels justified in pronouncing the false and deceitful clamor which pervades the bill of complaint. The declaration in said bill of complaint following the averments as to the alleged forgery of said testimonio that, "since the second day of February, 1859, said (alleged) facts have been known to the whole world as matters of general notoriety, the same having been published in Report No. 540 of the House of Representatives of the United States, made at the first session of the 35th Congress," carries reckless and extravagant falsehood on its face. "The world knows," or might know if it would take the trouble to investigate and find out the truth, as respondent feels justified by all the information he possesses in declaring, that the said Report No. 540 had its origin in the imposition practised on its authors by an extraordinary array of false statements, false pretences, and false testimony, the offspring of an equally extraordinary combination of fraud, cupidity, and malignity, directed against a learned and upright judge, and coupled with the most persistent and unscrupulous but vain efforts for his impeachment.

Respondent will do the complainant the justice to suppose that
112 he was not a party to these transactions, as probably the time for his appearance on the stage of action had not then arrived, and it may not have then been known or suspected how useful an instrument he might be rendered. He was then, respondent supposes, quietly pursuing his avocation, whatever it was, in Mexico, without so much as dreaming of the principality in Texas, which he had overlooked, or seems utterly to have forgotten five years beyond the period old Van Winkle is said to have slumbered, although it is not averred or suggested in the bill that he was really asleep during the twenty-five years from 1833 to 1857, when he turns up for the first time as a witness for the defendants in a suit brought by this respondent against occupants of a portion of said eleven leagues, and claimants thereof, though not by title derived from or through the complainant. Complainant does not profess

to have been a party to the defence of that suit, though a very willing witness, yet he makes it a charge in his bill, while his own testimony was ex parte and taken without notice, that respondent caused a deposition to be taken in the same case (vs. Mitchell and Warren in the circuit court of the United States at New Orleans) without giving him notice. If he now desires to have it placed on the records that he was party or privy in the defence of that case he will probably find no objec-
113 tions to his doing so on the part of this respondent. He shows, by his deposition taken in the case just referred to, in which respondent's title to said eleven leagues of land was brought into question, and was the only important question involved, that he had actual knowledge of the pendency of said suit of this respondent against Mitchell and Warren, and of the matters involved therein; and respondent avers and insists that he is bound by the judgement rendered in that case, whereby the claim and title of respondent to said land as therein put in issue and involved, was justified and sustained, the said judgement being and remaining, as respondent avers, in full force, being the case referred to in Exhibit L.

Respondent, further answering, says the said complainant claims the credit of having been, since the first day of February, 1861, an "alien friend" of the United States, while he charges that all the defendants, except Judge Watrous, "became, and were the public enemy," of that Government, and that, being "the public enemy" aforesaid, in furtherance of their conspiracy aforesaid, took advantage of the rebellion to benefit themselves and to injure complainant, and did fraudulently and collusively cause said tract to be divided among themselves and others by a decree of the rebel district court, &c. If respondent's loyalty to the Government of the United States were a matter in issue in
114 this case he might feel it incumbent on him to make some response to the gratuitous and insolent charge of this Mexican, who, in another part of his bill does not scruple, recklessly and without any evidence of its truth, to charge one of his own countrymen, who had been entrusted with honorable and responsible office in his own city and government, with accepting a bribe to commit perjury. Respondent has, hereinbefore, pronounced all charges of fraud and conspiracy, in whatever shape preferred in said bill, so far as relate to respondent, to be false on his own knowledge, and, to the best of his knowledge, information, and belief, to be false as to his co-defendants, and now pronounces the charge of having fraudulently and collusively caused said tract to be divided by the decree of the court referred to to be equally destitute of truth. Said decree was rendered without the knowledge of respondent and by way of compromise, as respondent is informed; and though respondent believed and still believes that, by it valuable rights, fairly and legally his, were conceded unnecessarily, yet for the sake of terminating litigation he was willing to let the decree or decrees stand as it or they had been rendered, supposing, and not doubting, that his attorney had acted in good faith in consenting to the decree as a compromise of the then pending litigation.

115 This respondent, further answering, says, in responce to the interrogations in said bill;

To the first interrogatory. The legal title claimed to be held by respondent by conveyance from the said League, does not, respondent believes, depend for its validity solely on the said testimonio. Respondent believes that if said testimonio were conceded to be a forgery, as averred (and falsely as respondent believes) by complainant, or if no such document had ever existed, his title to said land would still be

valid and sufficient, certainly as against complainant. He claims and avers that his title is valid and sufficient by prescription. He claims and avers that his title is valid and sufficient by possession under claim of right and title extending through the said Mrs. St. John, and her agent or agents, and the said M. B. Menard and Nathaniel F. Williams, holding title for her use and benefit, back to the first day of May, 1840, (A. D. eghteen hundred and forty.) Respondent claims and avers that his title is valid and sufficient by his continued possession, and that of his agents, and of parties attorning to him, and by the public and continued assertion of his right and title under the conveyance to him by the said Thomas M. League, of 1st July, 1850, and from thence down to the present time, under and with all the requisites specified in the laws of Texas. He claims and avers that his title to said lands is valid
116 and sufficient at all events against this complainant, and all claiming under him adversely to respondent, under and by virtue of the claims and possession of all persons, whomsoever, who have had possession of said lands since the 4th day of October, 1833, down to the commencement of this said suit. Respondent avers and claims title to said lands against the complainant, and all who may claim by, through, or under him, adversely to respondent, by all titles and possessions whatsoever, relating or pertaining to said eleven leagues of land, and to each separate acre thereof, and by all the facts averred in, and allegations of this answer, and by all facts which may be otherwise stated and shown in the proceedings under and in relation to the said bill of complaint. And respondent avers and pleads by way of defence to the claim of title by complainant, and to all claims set up in the said bill of complaint, that all right and title ever possessed by complainant to the said eleven leagues of land, and every part thereof (if not otherwise alienated by him) became, and was, and is, barred by the statute of limitations, enacted by the State of Texas, applicable to lands in that State. Respondent avers that for twenty-five years at least, next following the 4th day of October, 1833, say down to the period when the complainant was called upon to give testimony as aforesaid in the said case by
117 Mitchell and Warren, in the year 1857, he did not, so far as respondent has ever heard, and respondent believes, and so avers, he did not, in fact so much as pretend to the possession of any claim or right to said tract of land, or any part thereof; nor to have nor pretend to have the control or possession thereof, in any manner; nor to exercise any control or ownership over it; but acted during that long period just as a man would be expected to act in relation to land after having parted with all right and title thereto; never so much, during said last-mentioned period, and subsequently, as respondent is informed and believes, and so charges, as to pay any taxes on said land, nor concerned himself one way or another about said taxes or about anything in relation to the said land, until after his attention was awakened or directed to the fact that he many years before obtained a grant for a large tract of land in Texas, by being called upon by parties litigant, to testify as hereinbefore mentioned for the purpose of defeating the title of respondent to said lands. It was then, as believed, suggested to him, or the idea first occurred to him, that a chance was presented to set aside an alienation made or authorized some twenty-five years previously, when the lands were in a distant wilderness, roamed over by wild beast and savage Indians, and regarded as of trifling, if of any real value. Up to that time, judging by his actions, he
118 was as profoundly oblivious of said land, and of any right he possessed thereto, as might have been expected, had the grant in

question been located in the great Arabian Desert. After making the deposition referred to in 1857, then for the first time his pretended claim, so far as ever heard of by respondent, began to be brewited about, and not then by himself in person, but by those who from interested motives, busied themselves in the matter, and who had taken an active part previously in favor of adverse claimants litigating with respondent. So far as respondent is informed and believes, and he so avers, the complainant had never, down to the filing of his bill, nor up to the present time, paid a dollar of taxes on said lands, or any other expenses; if he has done so at any time, it was done doubtless, simply as a matter of policy. But respondent believes, and so charges, that, up to the exhibition of the bill of complaint, he had never paid a dollar of taxes on said lands. Large improvements were made years ago on different portions of said tract; dwelling-houses and other buildings were erected, and plantations cleared up and fenced, and cultivated from year to year, and sold and conveyed from time to time. All this was done without any demand for possession, or the assertion of any claim, or right, or title against the occupants of said improvements, by or on behalf
119 of complainant, so far as ever known to or heard of by respondant, for at least twenty five years from date of said grant, if not down to the exhibition of said bill of complaint. Respondent regards it as impossible to reconcile such conduct with any just claim of complainant to said land, or to the belief on his part of the existence of any such claims; and respondent avers that no such claim exists.

To the second interrogatory. Respondent does not believe or suspect, and has never believed or suspected, that said testimonio was a forgery, but is firmly convinced, from all he knows and has seen or heard on the subject, that it is genuine and valid. For answer to that part of this interrogatory which speaks of a release to said League, and the reasons for what was done on this subject, respondent refers to a previous part of his answer where this matter is fully explained.

To the third interrogatory. Respondent does not know what searches were made, or when or by whom, at the office of said secretary, or elsewhere, at Saltillo, for the purposes mentioned, nor the discoveries made in any such search by or on behalf of the defendants or any of them, nor that the defendants or any of them, were informed that said testimonio was a forgery. Respondent was never so informed—not regarding what he believed the interested and false testimony of
120 the complainant, of which he was informed, (his ex parte deposition hereinbefore referred to in the case of respondent vs. Mitchell and Warren,) nor what he believed to be the false rumors on this subject set afloat by the complainant, or other interested parties, as information; certainly not as information of what was the real facts and the truth relating to said testimonio. And in regard to said deposition of complainant, if respondent's information is correct, it is not alleged therein that the testimonio was a forgery, but that the said La Vega did not sign or execute the original, his deposition being regarded as evasive.

To the fourth interrogatory. Respondent has no knowledge of the expenditure of any sum of money for the purposes stated in the interrogatory. The idea of taking a daguerr'otype or photograph of the instrument in question, or of not taking it, never occurred, and was never, before seeing this interrogatory or other similar statement in the bill, suggested to respondent. The idea of the feasibility of such a thing in this case had certainly not occurred to him, nor, so far as he knows or believes, to any of the defendants, nor to the said League or Treanor, at or before the taking of the deposition of Gonzales hereinafter men-

tioned, nor subsequently; and, in a long practice as a lawyer, respondent has never known such proof resorted to, and, so far as here col-
121 lects, has never heard of it being done. Respondent would much prefer to see and examine the real and original document to see what evidence it exhibits of having been tampered with, or otherwise. When an interested and unscrupulous person has access to archives (and there could have been no difficulty in complainant's getting access to this document) it may be an easy task, by some chemicals or erasive powders, or by a suitable knife, to remove a signature or other writing on such an instrument, and by some care and skill this may be so done as to leave but very slight and possibly no trace at all of the erasure; and even if awkwardly done the evidence of it would not be exhibited by a photograph. For these reasons the sight of a daguerr'otype or photograph would not be satisfactory to respondent, and should not be to a court. As to expenditures made to procure testimony supposed to be here referred to respondent refers to his answers to the 9th, 10th, and 11th interrogatories.

To the fifth interrogatory. Respondent says that, according to his information and belief, the said testimonio was, at the time of filing of the bill of complaint, in the hands of T. J. League, esq., of Galveston.

To the sixth interrogatory. Respondent says on information
122 and belief, that said testimonio was put on record in McClennan county at the instance of his said attorney, Robert Hughes, esq., on the 9th day of September, 1856, upon the proof and affidavits of Juan N. Seguin and James Hewitson. Respondent does not now remember whether it had been previously recorded in any county, but it had been filed in the general land office of the State of Texas, as respondent is informed and believes, from the year 1838, to the eighteenth day of December, 1854, when it was withdrawn by respondent's said attorney to be put on record, and to be used in various suits.

To the seventh interrogatory. Respondent says that said testimonio is of record in Falls County, and also in the other counties, as he is informed and believes. It was recorded in Falls County on the 6th day of October, 1859, at the instance of the attorney of said Lapsley, and upon the proof before stated, and also on the additional authentication and proof of Juan Gonzales, the officer issuing said testimonio, as will more fully appear by said testimonio and the authentications and proof annexed thereto. When produced, the proof by said Gonzales differed from the former proof only in being more particular, exact, and specific, and in the fact that said Hewitson had stated in his authentication that said Gonzales was dead, a mistake occasioned, as this respondent
123 is informed and believes, by a false report of that character which came to said Hewitson in his absence from Saltillo.

To the eighth interrogatory. Respondent does not know whether or not the original of said testimono contains the signature of said La Vega, never having seen it, or conversed or corresponded with any one who professed or was supposed to have seen it. Respondent has never, in conversation or in any other manner, stated or admitted that it did not contain said signature; and is not aware of having changed his belief on this subject.

To the 9th, 10th, and 11th interrogatories. As these all seem to relate to the same matter, respondent will answer them together. Respondent learned by a letter from his counsel, Judge Hughes, under date of 19th April, 1857, that he had been surprised by the depositions of this complainant and another witness, whose name was not stated in his letter, taken by or on behalf of the defendants in a suit then pending in the

United States circuit court at New Orleans, wherein respondent was plaintiff and Mitchell and Warren defendents, in which respondent's title to said tract of land was involved; that said depositions
124 were taken ex parte, and without any notice to respondent, his counsel, or attorney, or agent, the same having been a short time previously filed in said court. In this letter Judge Hughes states that said "La Vega is careful in testifying, only to depose to the effect that he never signed or executed the power in question when he did know that he had parted with his right in 1832," and expresses the conviction that it "is utterly impossible" that he should "suppose himself the owner of the land after the lapse of twenty-five years without any claim by him." He, however, advised the taking of some countervailing testimony, and under his advice the said Thomas League was engaged to go on to Saltillo to make enquiry and have such testimony taken as should be deemed material; and it was respondent's understanding that Mr. League would go to that place and attend to said business in person. Nothing, so far as respondent remembers, was said about what compensation the said League or any one else should receive. Being unwilling to go alone, he engaged Mr. John Treanor to accompany him. Instead of going himself to Saltillo, Mr. League stopped at Monterey, and sent Mr. Treanor to Saltillo. His motive for this respondent does not know, but from what he learned subsequently, thinks he was operated on by apprehensions of danger of bodily harm of some kind,
125 perhaps to his life, if he *if he* went on to Saltillo, but from whom such danger was apprehended, if he ever heard, respondent does not remember. The said Treanor, on arriving at Saltillo, (where respondent understood, and believes he was previously acquainted,) met and conferred with Juan Gonzales, formerly regidor of that city. Ascertaining from him that he would prove the execution of said testimonio by the said La Vega, as he subsequently did, the said Treanor determined, (whether on his own responsibility or after consultation with the said League, respondent is unable to state,) to prevail on Gonzales to go on to New Orleans and give his deposition there; and as the said Gonzales was very reluctant to make so long and tiresome a journey, quitting his business, it was only by agreeing to pay him liberally that he was finally prevailed on to go, the least sum he being willing to take being thirteen hundred dollars, or thereabout, and his expenses on the trip; and this sum was promised, and, as reported to respondent by Mr. League in the account he rendered, was paid. Mr. League rendered to respondent the following account of the amounts paid by him in this business, including the charge for his own services. The facts stated in relation to the acts of said Treanor and League in procuring the deposition of said Gonzales are
126 stated on information and belief. The following is the statement of said Thomas M. League referred to:

| | |
|---|---|
| Paid to John Treanor for services, & carriage, horses ..... | $1,385 00 |
| " " T. M. League " " " " ..... | 1,250 00 |
| " " Juan Gonzales as indemnification for his loss of time & injury to business by his trip to New Orleans | 1,300 00 |
| "expenses of journey to Saltillo, thence to New Orleans, thence to Saltillo again..... | 1,488 72 |
| | $5,423 72 |

Respondent was somewhat surprised at the amount of the account

rendered, which greatly exceeded what he expected, and objection was made to the charge of Mr. League for his services, considering the fact he was an interested party.

As however he had previously rendered various services in paying taxes on the land, and in giving attention to various suits in relation to it, he was allowed the amount claimed on settlement. Respondent thought and still thinks that this business was not judiciously managed, and concurs with complainant that too much money was expended, and had he been attending to it in person, thinks he would have done differently, and would probably have had the deposition taken where the witness resided. This, however, he might well have done from his acquaintance with such business and his ability to have had it done in a proper and lawful manner, as probably neither the said Treanor
127 or League felt competent to do. To ensure the taking of the deposition in all respects correctly, deeming the facts stated by said Gonzales conclusive, as to the validity of the disputed testimonio, it was deemed best to have the deposition taken at New Orleans, where the attornies of both parties could be present and examine, and cross-examine the witness; and when the deposition was taken, the attorney of defendants in said case, who resided in New Orleans, was notified and attended and cross-examined the witness, as respondent was informed and believes. This last fact respondent thinks must be deemed sufficient to exempt him from the censure invoked by this complainant on account of the omission to give him notice of the taking of this depo ition, he being then only known as a witness, though an interested one in the same case, at least in feeling. The charge that this witness was taken to New Orleans to be examined outside the jurisdiction of Mexico, so that he might avoid a prosecution for perjury in Mexico, respondent regards absurd as it is certainly false, so far as respondent knows, or has any reason to believe. Had this been the motive or intention, why take the witness to New Orleans where one of the defendant's attorneys was known to reside, and where he would be subjected, as he was, to rigid cross-examination? Why not have taken
128 him across the line into Texas, and avoided the long journey, and take his deposition ex parte as in case of complainant's deposition? In the latter case he would have been equally secure from prosecution, and had he been the purchased and willing witness charged, his deposition could have been made just what the parties desired, neither more nor less. Gonzales in testifying certainly did not believe that his testimony could by any possibility operate to secure to him, or aid in securing to him an estate "worth not less than three hundred thousand dollars." Can the said Tomas de la Vega say the same in regard to his deposition in the same case? Can he say that he swore disinterestly, without any thought of the effect his testimony might have on his plans, then probably for the first time conceived, for securing his newly-discovered principality in Texas? If his fellow-countryman, Gonzales, proved to have been a man of good character, as it is fair to presume he was from his official position, could be corrupted and purchased for thirteen hundred dollars, and make a long and tiresome journey to get it, what influence must the hope and prospect of gaining an estate worth, as averred in the bill, at least three hundred thousand dollars, have on this other Mexican, the complainant
129 in the case? Must it be taken for granted, against all the pregnant facts and circumstances referred to in this answer, and various others which might be mentioned, that he is honest and incorruptible? The generality of men will speak the truth under oath when

not under temptation to do otherwise. Why, then, the enquiry suggests itself, was not the said Gonzales called to testify on the same side and at the same time that the complainant gave his deposition? He was the officer before whom the alleged forged instrument was ostensibly executed. He was the countryman and neighbour, and it is fair to presume the friend of the man, who, by his own statement, was in danger of being cheated out of a large estate by means of this instrument. It is not pretended that up to that time he has been approached by or on behalf of this respondent, or that he was under any influence whatever that could induce him to do otherwise than swear to the truth to the best of his knowledge and belief, while his sympathies would naturally incline him in favor of his countryman and neighbour against unknown foreigners who, it was alleged, were endeavoring to perpetrate a great wrong against that neighbour. Why, then, was he not called to testify at the time the deposition of the said La Vega was taken? His testimony would not, like La Vega's, have been liable to be im-
130 peached for interest, and it must have been considered important to sustain La Vega with his large apparent interest on the side on which he was testifying. The reasonable presumption would be, as seems to respondent, that Gonzales knew facts which it was not desired to prove, and that he was honest, and if called on to testify, would speak the truth, and his having testified to the truth when subsequently called upon as a witness on behalf of respondent, explains, as respondent believes, the rude and unjust attack made upon him in the bill of complaint. Respondent has stated all the material facts within his knowledge and remembrance, enquired about in said 9th, 10th, and 11th interrogatories, except as hereinafter stated.

Respondent is unable to state whether or not the said Treanor examined the archives at Saltillo, as stated in the bill, nor what he did or did not discover, never having conversed or corresponded with him on this or any other subject. He did not, so far as respondent is informed, obtain a sworn copy or deguerr'otype or photograph of any document or instrument in said archives; but it is not true that said Treanor omitted to testify as charged. At least respondent was informed by letter from his counsel, Judge Hughes, that he did testify by deposition on his return from Saltillo, and stated a portion of his testimony,
131 among other things that he testified that Tomas de la Vega was as well known by the name of Tomas Vega. Respondent denies the truth of all the statements and charges in the bill, to the effect that said Gonzales was paid to swear falsely, or to go to New Orleans to avoid prosecution in Mexico for forgery, and all other charges of covin or fraud in relation to the procurement or taking of the deposition of said Gonzales, and all other matters pertaining thereto, so far as known to respondent. In relation to the blindness of the said Gonzales stated in the bill, respondent was informed by his counsel, Judge Hughes, that after his arrival at New Orleans, although his unassisted sight was very imperfect, yet, with a pair of spectacles, which he procured after his arrival at New Orleans, he could see to read distinctly.

To the twelfth interrogatory. Respondent, in a previous part of his answer, has denied the truth, according to the best of his knowledge, information, and belief, on behalf of himself and his co-defendants, of the charges and statements of conspiracy, common intent, and design of defendant referred to in this interrogatory, and all of like kind wherever stated in the bill of complaint, and deems it unnecessary to say more here in regard to the same than to refer to said denials, and
132 to reiterate them as he does, without qualification. In relation to

"the public and general notoriety" of the "matters" referred to in this interrogatory, respondent would remark: He is aware that false reports and false clamors, such as abound in the said bill of complaint, were at one time, and may be now rife in certain portions of Texas, and it would, respondent believes, not be difficult to trace them to their sources, which, doubtless, are well understood by complainant and his confederates; otherwise than this, respondent does not know that said "matters," the charges referred to, are of "public and general notoriety;" but respondent has yet to learn that title to lands can be rightfully adjudicated in Texas, or established, or overthrown, by means of false reports, or false statements, however industriously propagated and notorious, or by false clamors however loud and prolonged. Respondent refers to other portions of his answer, for answer to the concluding portion of this interrogatory, which he regards as full answer thereto.

To the thirteenth interrogatory. Respondent has no knowledge of the matters enquired about in this interrogatory; he has an impression that he heard some years ago, and believes, and admits that he did, that the said testimonio was brought before the said Watrous, presiding as district judge of the United States in Texas, and that he admitted
132 the said testimonio as evidence before the jury; but at what time, and on what testimony, and under what circumstances, respondent is unable to state, not knowing the facts. Respondent, not being aware that the said Watrous had any reason to regard the said testimonio as other than good and valid, does not doubt that had it been presented to him, as presiding judge in the trial of a case pending before him, being incumbent on him, as judge, to pass upon it, he would have decided it to be good and admissible evidence to go to the jury; and if he did so decide in any case, respondent, without knowing, presum's he did so under the same or similar evidence on which the judge of the circuit court of the United States, at New Orleans, in the case of this respondent vs. Eliphas Spencer, made a similar decision in relation to the same document, which was approved and affirmed by the Supreme Court of the United States. But of this respondent is sure, that the said Watrous never made this or any other decision at respondent's instance, or any desision in any case in which respondent had an interest. So far as respondent is informed or believes, no one ever interested in said tract of land was a member of that jury—the jury referred to in the 13th interrogatory.

To the fourteenth interrogatory. Respondent refers to a preceed-
134 ing portion of his answer for his estimate in relation to the value of said tract. Respondent is unable to form anything like an accurate estimate of the value of the rents of said tract, and of the use and occupation thereof, or of the amount or value of the timber cut and taken from the same since the first of February, 1861, or previously. As hereinbefore stated, large improvements in buildings, clearing, and fencing, have been made on various portions of said tract, (which, or the greater part of which, as respondent is informed and believes, was done prior to the first day February, 1861,) the value of the use and occupation of which must have been and must be very considerable. Eliphas Spencer, as respondent was informed and believes, rented a portion of the land claimed and occupied by him, (being a choice portion of the tract,) at the rate of five dollars per acre, and crops (large and valuable crops respondent supposes, from the information he received,) were made upon the portion of the tract during a number of years, claimed and occupied by Arnold and various other persons; the portion claimed and occupied

by Arnold, embracing 640 acres, having been occupied and in part cultivated by him or the party under whom he claimed some years, as believed, (how many respondent is unable to state,) prior to July, 1850, the date of the conveyance to respondent, and was, subsequent
135 to the said conveyance to respondent, as respondent was informed and believes, sold by said Arnold at a large price—thirty dollars per acre, as well as remembered. But this, as well as other large portions of said tract, as hereinbefore stated, or shown in said Exhibit B, having been disposed of by Mrs. St. John or her agent (conferring what respondent regarded equitable title on the purchasers,) respondent waived all claim to. The parties and their assigns thus claiming under prior purchase from the said Mrs. St. John or her agent, have been wholly undisturbed in their claims and possessions, from the dates of the respective purchases from Mrs. St. John or her agent, all dating back more than eighteen years, and probably as to some of them considerably longer; how long, respondent is unable to state. but down to the exhibition of the bill of complaint in this case. And this fact of peaceable possession and enjoyment applies, so far as complainant is concerned, to all persons who have at any time claimed, or occupied, or used any portion of said tract, (and many persons have, for long periods, claimed and occupied various and choice portions of it,) from the date of said grant to complainant, in the year 1833, down to the period of the exhibition of his said bill of complaint, as respondent is informed and believes, and so avers. The foregoing statements of the long silence
136 and inaction of the complainant, and his perfect acquiescence in the possession and enjoyment by all who chose to possess and enjoy said tract, or any part thereof, during the period of twenty years, or more, are evidence of the most extraordinary forgetfulness or liberality on the part of said complainant; or, which is far more probable, and which respondent charges to be the fact, are evidences which no clamor and pretence can overcome, that the complainant well knew that he, many years ago, parted with and alienated all the right and title he possessed to said tract, (or that he authorized it to be done, and that it was done under his authority;) and that the said bill of complaint, as well as the action at law lately commenced in his name against the defendants in said bill, or some of them in the same court, and the claims averred therein, are totally false and fraudulent. Respondent never cut or removed any timber on or from said tract, nor authorized it to be done, but he learns that much was cut and removed by trespas'ers, in despite of his efforts, through agents, to prevent it; nor has he ever received any rents or profits for the use and occupation of said land, or any part, or for wood or timber used on or taken from said land; but he claims that large sums are due to him for rents and profits from the estate
137 or heirs of the said Spencer and other trespas'ers on said lands. If any portion of respondent's answer to the 14th interrogatory should be deemed unnecessarily full and beyond requirement, he asks that such portions, and his whole answer to this interrogatory, so far as applicable, may be taken as answers not only to the said 14th interrogatory, but to every claim and demand averred in said bill of complaint against respondent.

To the fifteenth interrogatory. In this interrogatory what seems to respondent a curious as well as somewhat difficult querry is propounded, seeming to ask the defendants to sit as court and jury, and so stating his case as to render it impossible to decide it adversely, without going into an elaborate or accurate calculation, which would be very tedious and long, if respondent had all the data, which he has not, such as the

value of the use and occupation of the various and large portions of the land cleared and placed under cultivation, and of the various dwelling-houses and other valuable buildings, including the large brick cotton factory hereinbefore referred to, and of all the other improvements aforesaid placed upon the lands by the numerous occupants and claimants of various portions of said tract since the 4th day of October, 1833, the date of said grant, and of the value of all the wood and tim-
138 ber which has been cut and consumed upon or removed from said tract since July th, 1850, the date of respondent's claim; the value of the rents and profits and use and occupation of all of said cleared lands, and dwellings and other improvements, for about eighteen years, from July, 1850, and of the said wood and timber so cut and removed or consumed on the lands, all which, as understood, are claimed in the bill of complaint. These values for the period stated, especially if interest be added to them, as would be lawful if the claims are lawful, would amount to a large sum—many thousands of dollars, but how many it is beyond the power of the respondent to state with the data in his possession, or conveniently procurable. If he should name the sum it would be guess work, and might fall far short or exceed the amount. Respondent, therefore, says he is unable to state the amount, or probably near the amount, which complainant would be entitled to recover on the suppositious case stated. Had the question propounded been what is really due to complainant, or what complainant, if honest, would, in respondent's opinion, honestly state under oath is legally and justly due him on account of said matters, the answer would have been brief and categorical—a single word would have sufficed.

139 To the sixteenth interrogatory. Respondent might well ask in reply, What business is that of yours? Suppose respondent should say he was or was not a rebel? Would either answer give complainant title to land which he does not possess, or take from respondent title which he does possess? Such querries and responses thereto may, for aught respondent knows, be pertinent in chancery suits in complainant's country, where rebellion and revolution have long been so common as to justify or call forth the remark that "rebellion and revolution seem to be the normal condition of the people and country,' which would seem to make it remarkable that complainant should concern himself so much about a single attempt at revolution in this country. Yet, to satisfy what may possibly be the excusable curiosity of complainant, respondent will state that, although he urgently opposed the attempt at secession on the part of his State, yet, after secession became an accomplished fact, in spite of complainant's opposition, he did not attempt to resist the will and power of his State, combined with the power of nine or ten other States, nor abandoned what for so many years had been his home, but accepted the situation he could not prevent, and, in compliance with what he then regarded a necessity
140 or the requirement of honor and duty, when hostilities commenced sided with his native land, without, however, having taken up arms. Would the "alien friend," under similar circumstances in his own country, have acted differently? Would he in such a case have taken up arms against his kindred and section, or have abandoned and fled from them and from his home?

To the seventeenth interrogatory. A large portion, if not the whole, of this interrogatory, like all, or a good portion of most of the others, is regarded as impertinent, as, indeed, may be said of a large portion of this "fishing bill." If complainant has fair and valid title to these lands, as he pretends, or if he really believed so, why attempt to lug

before the honorable court, such masses of wholly irrelavant matter? The instrument and agreement hereinbefore referred to (a copy of which is marked Exhibit B) shows the original interest of respondent and the other parties to that agreement in said lands, and the portions of the tract conceded to parties claiming by conveyances or purchases from Mrs. St. John or her agent, to which respondent sets up no claim. The interests of the parties to the agreement just referred to remain undivided, unless a recent attempt at partition at Waco, in Texas, by agreement, when respondent was not present, should be carried
141 out and made effectual. Respondent made or authorized quit-claim conveyances of portions of said tract to various persons, but the names of the persons, and the quantities and boundaries of the land disposed of to each, respondent cannot state from recollection, and does not possess the means of designating, and is unable now to do so, but, if required by the honorable court, respondent agrees to have prepared and filed as an exhibit in the cause, as soon as practicable, a statement in regard to the lands so disposed of, with the facts therewith enquired about.

To the eighteenth interrogatory. Judgements or decrees were rendered in the district court of Falls County, Texas, at the spring term thereof, 1864, in the following-named cases then pending in said court, affecting the said eleven leagues of land, or the portions thereof designated in said judgements or decrees, viz: No. 350, John W. Lapsley vs. John Marlin et als.; No. 351, B. J. Thompson vs. J. W. Lapsley et als.; No. 352, J. W. Lapsley vs. Rober Orman; No. 354, John W. Lapsley vs. D. Blankenship et als.; No. 393, W. B. Loftlin vs. D. Hays et als. The judgements or decrees in the cases in which respondent was a party, were rendered in conformity with compromises made by E. J. Gurley, esq., acting as attorney of respondent, and
142 Reagan, esq., acting as the attorney of the adverse parties. This was done without consultation with or knowledge of respondent, who was then in Alabama, the said Gurley acting on his own judgement and, as respondent presumes, as appeared to him at the time best for the interest of the party he was representing, though probably his anxiety to terminate the litigation which had so long been pending without prospect, in the then condition of the country, of any early termination, induced him to make greater concessions by way of compromise than comported with the interest of respondent; but, being done, respondent, on receiving copies of the decrees, acquiesced in what had been done. So far as respondent knows or has reason to believe, the said Gurley acted in good faith, and without any desire or purpose to defraud or wrong any one in regard to said judgements or decrees; and if any of the co-defendants, or any one else authorized to act for respondent, acted otherwise than fairly and honestly in relation to said judgements or decrees, respondent has no knowledge or information of the fact, and he is well satisfied that such was not the fact. Respondent cannot undertake to speak for said Reagan, who was and is an entire stranger to respondent, and cannot say what were
143 his motives, but, so far as known to respondent, his motives were honest and proper. Respondent took it for granted, without knowing anything to the contrary, that the attorney professing to represent the adverse parties acted under due authority. Respondent denies, on the best of his knowledge, information, and belief, the fraud and collusion charged in relation to said judgements or decrees, and avers that he has never admitted in any manner or believed that said judgements or decrees were fraudulently and collusively obtained.

And now this respondent, having fully answered the interrogatories addressed to him, further answering in defence to said bill of complaint, says that no case is made by said bill, or can be made by proof of the averments, which is a proper subject of equitable cognizance or relief, or for which the said complainant has not a plain, complete, and adequate remedy at law.

And this respondent further says that the Thomas M. League named in said bill died before the filing thereof, leaving as his heirs Esther Y. League, his widow, Thomas J. League, Esther Wells, married to Clinton G. Wells, and John C. League, a minor, under the guardianship of his mother, the said Esther Y. League, all of whom are citizens of the State of Texas, but are not made parties in this cause.

144 Wherefore this respondent says that said bill is defective for want of necessary parties, and should be dismissed.

And this respondent further says that he and Thomas J. Frow, Westley Plattenburg, James L. Price, and Thornton Goldsby, all through said respondent as their representative, and also Thomas M. League and John C. Watrous, purchased the tract of land in said bill mentioned, and received a conveyance thereof, made in due form to the said respondent, for a valuable consideration in money by them, through said respondent, then paid, to wit, in the year 1850, in good faith, and believing that the chain or transfer of title, from the government, to wit, the State of Coahuila and Texas, down to their vendors, to wit, M. B. Menard and Nathaniel F. Williams, as the vendors and grantors of said Thomas M. League, and to said League as the vendor and grantor of said respondent, was perfect and valid, and without any knowledge, actual or constructive, suspicion or doubt that there was any imperfection in the power of attorney from said complainant to said Samuel May Williams, authorizing the latter to sell said land.

And this respondent further says that the said complainant, if he had any title or claim to said land, had abandoned or lost it, before the filing of his bill, by his laches and neglect in prosecuting it, and so informing and cautioning the public not to purchase said land from a

145 person held out to the world as authorized by him to sell it; that said "testimonio," as this respondent is informed and believes, was on file in the land office of the Republic of Texas in 1838 and thereafter, and was recorded in the county where the land was situated in 1856; that the sale to said Lapsley was made in 1850, and recorded in 1851; that the land, as this respondent is informed and avers, was publicly represented by said Samuel May Williams, from the year 1833 to 1840, as being for sale, and as in his power to sell, and was known as belonging to Stephen F. Austin; that it was, in fact, sold to Mrs. St. John, in 1833 or 1834, to raise money for the said Stephen F. Austin, and the deed to her trustees made in 1840 was then made for greater safety only; that Mrs. St. John publickly exercised acts of ownership over it, and her agents or tenants were upon it; that, from July, 1850, to the present time, said land has been in the possession of said Lapsley, by his agents and tenants; that said complainant, in case he had been the true owner of said land, would have cared for and protected his interests and asserted his rights, but that, until the year 1857 or 1860, he never asserted any claim or right to said land, and, as respondent is informed and believes and avers, he has never been within the State of Texas to do so, and that the only persons now or at

146 any time asserting a right in said La Vega are the aforesaid Simon Mussina, a notorious land speculator, and William Alexander, esq., equally noted for his implacable prejudices, who, as respond-

ent has reason to believe and so avers, have sought to make this claim a support for their attack upon Hon. John C. Watrous, to whom they have become inimical on other grounds, the said Vega being used as an instrument; that there is nothing to show that this bill or any other proceedings have been filed or taken at the instigation of said complainant, but he has been inactive, inert, and indifferent in regard to his alleged claim from 1833 to the present time; he has paid no taxes on said lands and appointed no agent to take possession, nor asserted any right to it up to 1857, when said Mussina and Alexander claimed to be so appointed; that, by his conduct, he has virtually affirmed and sanctioned said power of attorney and the conveyance made thereunder, and by his laches he has lost all right to consideration or relief in a court of equity.

And this defendant further says that the right and claim of said complainant accrued, if at all, more than twenty years before the filing of this bill, to wit, from the date of sale by Samuel May Williams to Menard and Williams, as trustees for Mrs. St. John; and more than ten years before the filing of this bill, if such right and claim is deemed to accrue only from the time when the conveyances from Menard and
147 Williams to said League, and from said League to Lapsley were put on record; and that such claim is therefore a stale demand, and will not be enforced by a court of equity held in the State of Texas, and administering the laws thereof.

And this respondent further says that he has, through his agents and tenants, had and held peaceable, continuous, and uninterrupted adverse possession of all of said tract of eleven leagues of land, which had not been sold by Mrs. Sophia J. St. John or himself, for more than ten years before the filing of said bill, and for more than three years after, deducting from the time of said possession the time required by law or constitutional provision to be deducted, on account of the late civil war, holding and claiming the same under title derived from and under the sovereignty of the soil, to wit, the State of Coahuila and Texas, which was the sovereignty at the time of the issuance of the original title.

And this respondent further says that he has, through his agents and tenants, had and held peaceable, continuous, and uninterrupted adverse possession of all said tract of eleven leagues of land, which had not been sold by Mrs. Sophia J. St. John or himself, for more than ten years before the filing of said bill, and for more than three years, after deducting from the time of said possession, the time required by any law or constitutional provision, to be deducted on account of the late civil war, holding and claiming the same under color of title derived from
148 and under the sovereignty of the soil, to wit, the State of Coahuila and Texas, which was the sovereignty at the time of the issuance of the original title.

And this respondent further says that he has, though his agents and tenants, had and held peaceable, continuous, and uninterrupted adverse possession of all said tract of eleven leagues of land which has not been sold by Mrs. Sophia J. St. John or himself, for more than ten years before the filing of said bill, and for more than five years, after deducting from the time of such possession the time required by any law or constitutional provision, to be deducted on account of the late civil war, holding and claiming the same under a deed of conveyance from Thomas M. League to this respondent, duly executed and recorded, and using and enjoying said land, and paying the taxes due thereon. And this respondent denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged; without this, that

there is any other matter, cause, or thing in said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein well and sufficiently answered, confessed, and avoided, traversed or denied, is true to the knowledge or belief of this respondent; all of which matters and things this respondent is ready to aver, maintain, and prove, as this honorable court shall direct. And
149 humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN W. LAPSLEY,
*Respondent.*

WALTON & DE NORMANDIE,
*Solicitors for Resp't.*

Respondent here states that, for the purpose of correcting his aforesaid answer, the following noted interlineations and additions and obliterations, as they appear in said answer, were made by him before the signing of his answer, the said answer embracing fifty-four pages, containing this page as one, numbered from one upwards consecutively, except that in numbering the 3rd page was overlooked, and was subsequently numbered 2½, as it now appears, to wit: The word "by" interlined at top of 2½ page, the words "although not legally necessary" interlined on 8th page, and the word "amount" striken out on same page; the words "was invested in said" interlined on the 11th page; the words "of the costs, charges, and expenditures," interlined on the 13th page. On page 17, the letters "C" and "D" inserted respectively in the place of letters striken out before the word exhibit; and on same page the words "Respondent avers the genuineness and validity of the said testimonio" stricken out, and the words "the two last having been herein previously referred to as Exhibits C and D." On the 20th page the word "proceedings" stricken out, and the words "mentioned exemplifi-
150 cation marked Exhibit L," following the words "the last" interlined. On the 23d page the word "possess" and the word "that" stricken out, and the word "impeached" stricken out on 21st page. On the 25th page the words "in controversy" stricken out, and the words "being the case referred to in Exhibit L" added and interlined. On the 25th page the word "and" stricken out, and the words "and by way of compromise, as respondent was informed," and the words "as a compromise of the then pending litigation," and the word "if" interlined. Also interlined on the same page the words "or decreed," and the words "or they," and the word "that" stricken out. On the 27th page the words "by authority" and the word "contract" after the word "any" stricken out, and the words "any taxes on said land" interlined. On 30th page, the word "therein" interlined, and the words "his deposition" stricken out. On 31st page, the words "as he is informed and believes" interlined. On 33d page, "Thomas M." interlined. On 34th page, following the words "including the charge for his own services," the following words are added by respondent, to wit: "The facts stated in relation to the acts of the Treanor and League in procuring the deposition of said Gonzales, are stated on information and belief. The following is the statement of said Thomas M. League, referred to." On page 35th, the words "as respondent was informed and believes" interlined, and the words "at least in feeling" added to the words "though interested in the case." On 37th page, the words "up to that time" interlined. On page 40, the words "or in what court" and the word
151 "that" stricken out, and the words as they stand "not knowing the facts" inserted after the words "Respondent is unable to

state." On 41st page, the words "unable to form" and the words "or previously," and the words "or shown in said Exhibit B" interlined. On page 42, the words "as respondent is informed and believes, and so avers" added after the words "down to the period of the exhibition of his said bill of complaint." On 43d page, the words "claimed and" stricken out, and the words "hereinbefore referred to" interlined over the same words stricken out by mistake. On page 46, the words "and particulars in relation to which respondent is not informed of," and the words "in the district court of McClennan County, and" and the words "the judgments or decrees in the cases in which respondent was a party were" stricken out. On page 49, "Thomas M," and also the words "and believes" interlined. On 50th page, the word "practised" stricken out. On page 51, the word "possession" stricken out. On page 50 are the following interlineations: 1st, "as respondent is informed and believes & avers;" 2nd, "said La Vega;" 3d, "as respondent has reason to believe, and so avers;" 4th, "the said Vega being used as an instrument." In stating the interlineations on this, the 50th, page, one was overlooked, to wit: The word "implacable," which should have been referred to as the 3d.

Respondent has thus specified and noted all the obliterations which appear to his said answer, so far as seemed of any materiality,
152 and if in any case he has failed to do so fully and accurately, the failure proceeds from unintended omission or mistake. In referring to said explanatory statement to the pages of his answer, respondent has reference to the pages as numbered and marked on the margin, the pages being numbered from one upwards consecutively, except as to the third page which was overlooked in numbering, and is marked on the margin 2½. Where respondent has undertaken to state in his answer the date of any instrument or deed referred to, it is done from information or recollection; but if a mistake as to date has been committed in any case, it will be corrected by reference to the exhibits to be attached, which, as true copies, will give the true dates of all the deeds and instruments referred to in his answer. Respondent has omitted, for want of recollection or information, to state the date of the second deed to him from Thomas M. League, and of the agreement between himself and League, Watrous, Frow, Plattenburg, Goldsby, and Price, referred to in his answer, a copy to be attached as Exhibit B. Both these, the deed and agreement, were executed in the year 1850, the said agreement in the month of July, on the same day of the execution of the first deed to respondent from the said Thomas M. League, referred to in his answer, and immediately after the execution of said first deed.

Respondent annexes this, signed by him, as a supplement to
153 his answer-in-chief and explanatory thereof.

JOHN W. LAPSLEY.

154 THE STATE OF MARYLAND,
*County and City of Baltimore:*

I, William W. Latimer, commissioner with authority as such from the State of Texas, to take acknowledgements of deeds, and to administer oaths, and to attest and certify the same, resident in the said county and city of Baltimore, in said State of Maryland, hereby certify that John W. Lapsley, a citizen of the State of Alabama, but sojourning temporarily in the said city, whose identity as the person represented is fully and satisfactorily shown to me, appeared before me this 25th day of August, A. D. 1868, and being by me duly sworn, deposes and says as follows, to wit:

That he has read and comprehends the annexed answer and the supplemental and explanatory statement following and annexed to said answer, both of which are subscribed by him, the same being answer to a bill of complaint filed by Tomas de la Vega, complainant, in the circuit court of the United States, eastern district of Texas, against this affiant and others named as defendants therein; that the matters and things stated in said answer and supplemental statement are true, of his own knowledge, except as to matters therein stated on information and belief, which he believes to be true in substance and in fact.

JOHN W. LAPSLEY.

155 Sworn to and subscribed before the undersigned commissioner of said State of Texas, who, in attestation of this, his certificate, has hereunto subscribed his name as such commissioner, and affixed his official seal at his office in said county and city of Baltimore the date herein first above written.

W. W. LATIMER,
*A Commissioner for Texas.*

156 *Answer of Westley Plattenburg made part of answer of Tho. J. Frow, Exhibit 4.*

In the circuit court of the United States, western district of Texas. In chancery.

The separate answer of Westley Plattenburg, one of the defendants to the bill of complaint of Thomas de la Vega, complainant against John W. Lapsley, Westley Plattenburg, Thomas J. Frow, Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S H. Rennick, J. B. Earle, Edward Kellim, W. K. Kellum, and John C. Watrous, defendants.

This defendant now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary
157 for him to make answer to, now answering says, that the seperate answer of John W. Lapsly, his co-defendant, sworn to by him on the day of , A. D. 1868, and heretofore filed in this cause, and he is well acquainted with all that is stated in said answer of John W. Lapsley, from having been associated with him in interest and constantly coöperating with him in reference to the subject-matter of this cause, so that the knowledge, information, and belief, views, purposes, motives, and acts of said Lapsley, have been in fact and substance, also his own, and he therefore adopts the answer of said John W. Lapsley as his answer and craves leave to refer it, and have it considered as making a part of the present answer, except as may be otherwise hereinafter stated.

And further answering, this defendant more particularly says, on information and belief, that it is not true that the complainant was, on the fourth day of October, A. D. 1833, invested with the title or possession of the tract of land described in said bill of complaint in his own right or for himself, but he held such title and constructive pos-
158 session only in name and for the real use and benefit of Stephen F. Austin, who had, in the year 1832, purchased all his right, title, and interest in any land conveyed and granted in his name on the

concession made to him; and also that it is not true that he has ever been in actual corporal possession thereof since said day, but the possession has been held by others; and also that it is not true that he has never aliened said land or that said tract is worth three hundred thousand dollars.

And further answering, this defendant says positively and of his own knowledge, that he never had notice or knowledge of any fact showing that the title to said land was in said complainant before or at the time he acquired his own interest in it, and he never conceived any design of defrauding the complainant out of said tract or in any other manner; and he never conspired or confederated with anybody to injure said complainant or deprive him of anything; on the contrary, he never knew the complainant personally, nor heard that he was in existence until long after he had acquired his interest in said land, and he
159 had no purpose, design, confederacy, conspiracy, or any other thing in his mind in relation to him or anything that was his; all the allegations contained in the bill of complaint charging him therewith or with the knowledge of any forgery are maliciously and intentionally false.

And this defendant, further answering, says that as the circumstances which led to the purchase of said tract of land by said John W. Lapsley, in which these defendants were interested, and as to different paper writings, constituting the chain of transfer down to said Lapsley, he refers to the answer of said Lapsley before mentioned, adopts the statements in relation thereto therein contained.

And this defendant, further answering, says that as to the release of the warranty given originally by Thomas M. League, and as to the acts of Robert Hughes in obtaining from the general land office the testimonio of the power of attorney granted by the complainant with others to Samuel M. Williams, and authorizing the latter to sell the land mentioned therein, and as to the steps taken on the part of said
160 Lapsley and those interested with him, to prove that said testimonio was a genuine and valid instrument when it was attached by the third parties holding adversely to said Lapsley under other claim of title to said land, and as to the disposition of the interest of their co-defendant, Hon. John C. Watrous, and as to any searches or researches at Saltillo, he refers to the answer of said Lapsley before mentioned, and adopts the statements in relation thereto therein contained.

And this defendant, further answering, says that he does not know whether the said complainant ever was or now is an "alien friend" to the United States, and requires proof thereof if the fact become material; that this defendant cannot admit that he was the "public enemy" of the United States, otherwise than espousing the cause of the Confederate States in the late war, but that now he is a faithful and legal citizen of the United States; and although he admits and avers that, by judgment of a district court of the State of Texas, of competent jurisdiction, and by the consent of an attorney of that court who represented said complainant, the claim or pretence of a claim to
161 portions of said land, formerly set up on the part of the complainant, was extinguished, he positively denies that this was done for the purpose of injuring the complainant, or from any unfair motives; on the contrary, this defendant and those acting with him, believe that the complainant had fully consented thereto, and was properly represented by his said attorney. And defendant further says, on information and belief, that the present cause was not in-

stituted for the benefit of said complainant, but was instituted by and for the benefit of one Simon Mussina and William Alexander, esq'r', the solicitor who signs the bill, both of whom claim an interest under a power of attorney said to be given to said Mussina by complainant; and he therefore denies that said complainant was himself injured by said judgment, and insists on positive proof that he has authorized a denial of their validity or effect.

And this defendant, further answering, says that he has not in his possession any letters, papers, or memoranda, proving the truth of any of the allegations of said bill not herein admitted, so far as he knows or believes.

162 And this defendant, now proceeding to answer such of the special interrogatories contained in said bill of complaint, as he is thereby required to answer, and answering as therein required, says:

To the first interrogatory. That the legal title claimed to be held by defendant Lapsley, as stated in the bill of complaint, by conveyance from League, does not for its validity depend solely on "the testimonio" in said bill mentioned; on the contrary, such legal title is also based on the fact of the sale of said land by said complainant to Stephen Austin, in the year 1832, to secure which sale, said testimonio was to be issued; on the abandonment and laches, delay and neglect of complainant in setting up his present claim, amounting to an admission that he had aliened said land; on the fact of adverse possession of said Lapsley, by his agents, and the possession of those under whom he claims for the time and under the circumstances required by the law to acquire a title by limitation or prescription; on the judgments of the circuit court of the United States for the eastern district of Louisiana; and the

163 Supreme Court of the United States; on the judgments rendered by the proper district court of Texas, while the said complainant was represented by his attorney; and on many other facts and principles of law, which will appear on the hearing of this cause.

To the second interrogatory. That said "testimonio" was not believed, suspected, or known by this defendant to be a forgery at or before the conveyance by League to Lapsley, nor is it now. The covenant of warranty was required because League was not then known to Lapsley and those interested with him, and because they were not acquainted with the land titles or land law of Texas, nor with the facts in relation to the title of this land; and League was released from the warranty because when they became afterwards better acquainted with him, they were convinced that he had not deceived or misled them, and they were satisfied, from the decision of the courts and careful examination of all the testimony, that they could sustain their title to the land.

To the third interrogatory. That this defendant does not know

164 what searches, if any, were made in any offices in the city of Saltillo; but he never was informed by any agents employed by them, nor does he believe, that said testimonio was a forgery. He does not know whether the original, of which it purports to be a testimonio, was or was not actually signed by said complainant, but, as this defendant is informed and believes, that he had parted with his interest to Stephen F. Austin before the date of such original, he presumes that he either signed said original, as he should have done, or accidently omitted to do so; and if in fact he signed said original, and has afterwards altered it or consented to its alteration, then he has been guilty of a forgery, and this defendant desires the truth of the facts to be made known; but whether he signed the said original or not, he consented, as this defendant is informed and believes, to the

issuance of said testimonio; and this defendant knows nothing of the remainder of said interrogatory, nor does he know what alcabala is.

To the fourth interrogatory. That this defendant has expended no money in avoiding to do anything referred to in said interroga-
165 tary; but he has contributed his share to the expenditure of about five thousand dollars to establish the genuineness and validity of said testimonio by bringing witnesses from Mexico, at great expense, in order to confront them with opposing parties and counsel, so as to give the latter ample opportunity from cross-examination.

To the fifth interrogatary. That said testimonio, at the time of filing of said bill of complaint, was in the possession of T. J. League, esq'r., for and on account of Lapsley, and those interested with him.

To the sixth interrogatory. That said testimonio was placed on record in McClennan County, at the instance of said Lapsley or his attorney, on the 9th day of September, 1856, on the proof of Juan N. Seguin and James Hewitson. This defendant does not know whether it had been previously recorded in any county, but it had been filed in the general land office of the State of Texas, as this defendant is informed and believes, from the year 1838 to the 18th day of December, 1854, when it was withdrawn, by the attorney of said Lapsley, to be put on record, and to be used in various suits.

To the seventh interrogatory. That said testimonio is of record in Falls County, and also in other counties. It was recorded in Falls County on the 6th day of October, 1859, at the instance of the attorney of said Lapsley, and upon the proof before stated, and also on
166 the additional authentication and proof of Juan Gonzales, the officer issuing said testimonio, as will more fully appear by said testimonio, and the authentication and proof annexed thereto, when produced. The proof by said Gonzales differed from the former proof only in being more particular, exact, and specific, and in the fact that said Hewitson had stated in his authentication that said Gonzales was dead, a mistake occasioned, as this defendant is informed and believes, by a false report of that character, which came to said Hewitson in his absence from Saltillo.

To the eight' interrogatory. That he does not, of his own knowledge, or by credible information, whether the original of said "testimonio" now contains the signature of complainant or not. If it does not, this defendant believes that this omission was occasioned either by the negligence and fault of said complainant, or by the erasuree and obliteration of said signature subsequently. He has never stated, as far as he recollects, that it did not contain his signature; and he has never changed any opinion he has had on the subject, so far as he can remember.

167 To the ninth interrogatory. That about five thousand dollars was expended by said Lapsley, and those interested with him, in bringing witnesses from Mexico to New Orleans, to prove the genuineness and validity of said "testimonio," in order to confront said witnesses with the opposing parties, and their counsel, and allow the strictest cross-examination; and he thinks this course more satisfactory and fair to take depositions in a foreign count'y, either ex parte or upon commission.

To the tenth interrogatory. That said Lapsley and those interested with him, did pay on or about the sum, and in the manner stated in said interrogatory, to prove said testimonio was a genuine document, and they did so prove it.

To the eleventh interrogatory. That the statements in the bill to the

effect that said Lapsley, and those interested with him, sent John Treanor to Saltillo to procure proofs of the validity of said testimonio, which he took with him, and that said Treanor and Thomas M. League paid for said Lapsley to said Gonzales about thirteen hundred dollars,
and his expenses, to compensate him for leaving his business and
168 going to New Orleans, so as to be cross-examined by the opposing
parties, fairly and honestly, are true. This defendant does not know, and is unable to say whether said Treanor examined the archives in Saltillo or not, or whether he procured or not a copy-photograph or daguer'otype of said original of said testimonio, but he presumes he could not have found means to obtain such photograph or daguer'otype; and he says, to the best of his belief, the other allegations in said bill as to said Treanor, are untrue.

To the twelfth interrogatory. That he cannot believe that the statements in the bill as to any matters, are of public and general notoriety. Possibly these statements may be notorious in the little circle of the complainant's confederates and agents, and their friends, but these do not constitute the public. No combination, contract, or contracts, has ever been made, to the knowledge of this defendant, between any of the defendants, except as to the respective interest they have in said land, and the adjustment thereof, as stated in the answer of said Lapsley.

To the thirteenth interrogatory. That, to the best of his information
and belief, the said John C. Watrous is a district judge of the
169 United States, and, in a judicial capacity, never decided that said
testimonio was good and valid, or the reverse; but he is informed that he did admit it as evidence in the cause of Ufford vs. Dykes et als., upon the written agreement of the attorneys of plaintiff and defendants; he does not know who was foreman of the jury on this occasion.

To the fourteenth interrogatory: That if all the improvements were removed from said tract it would probably be now worth about fifty thousand dollars, but could not be sold for that sum, except in small lots, and gradually; as it is, with the improvements, and including them, it may be worth nearly one hundred and fifty or two hundred thousand dollars, but these estimates are based only on conjecture, and are not reliable as a basis of value. The land is not now saleable; this defendant and those associated with him, have received nothing for the rents and profits, use and occupation, and for timber on said land, since February 1st, 1861. The amount received by said Lapsley and those
associated with him, for sales of said land since that day, this re-
170 spondent is unable to say, but believes the amount, as stated by
said Lapsley in his answer, is correct.

To the fifteenth interrogatory. That the question is frivol'us, but, answering it literally, this defendant says that, if all the material statements in said bill were true, said complainant ought not to be entitled to any damages, because he is barred by his delay and by the acts of limitation in recovery the land or damages, and he has not in his bill accounted for his laches, or set up any exceptions to the effect of limitation; and, as the material statements in said bill are untrue, the complainant is not entitled to recover anything.

To the sixteenth interrogatory. That the statements in the bill, in reference to the status of the defendants, is that he was from the first day of February, 1861, "the public enemy" of the United States, and this defendant is unable to understand what the complainant means; but if he means that this defendant took part with the Confederate States, then he says that, residing in the State of Alabama in and since February, 1861, and being advanced in years and attached to his

171 home and friends, he remained in said State, and rendered obedience to any political sover'ignty or power de facto in possession and control of said State, but did not, unless thereby, become the "public enemy" of the United States.

To the seventeenth interrogatory. That this defendant owns and owned one-tenth interest in the tract of eleven leagues of land mentioned in the bill of complaint, excepting so much as had been sold by Mrs. St. John, or afterwards by said Lapsley, as described in his answer; but the legal title thereto is and was vested in said Lapsley, and the legal title of this defendant will not pass to him until after the execution of the trust assumed by him. The manner and time of acquiring such interest *in* fully stated in the answer of said Lapsley, to which this defendant refers. The consideration was, that they bore their share of the purchase-money and expenses. That consideration was paid before he heard or knew of the claim of complainant. No portion of said land *land* has been sold or encumbered by this defendant personally; and, as to the other defendants, he refers to the answer of said Lapsley.

172 To the eighteenth interrogatory. That several judgments have been obtained by or for said Lapsley, and for those interested with him, in the circuit court of the United States for the eastern district of Louisiana; and also in the district courts of the State of Texas for the counties of McLennan and Falls, as this defendant is informed and believes; but he is not advised of the particulars, and cannot state, but will procure certified copies, and produce them at the hearing. Whether any of said courts were rebel or not, this defendant, not being a politician, cannot positively state: but, according to his ideas as to State sover'ignty and the Constitution of the United States, he would say that said courts had rightful jurisdiction as between an alien and citizens of the State of Texas on one side, and citizens of the State of Alabama on the other. The judgments in said district courts, as this defendant is informed and believes, were obtained fairly, and not fraudulently and collusively against said complainant, represented by an attorney

173 chosen and authorized by him. This defendant has not admitted, in conversation or otherwise, that said judgments were fraudulently or collusively obtained, or that said complainant was not duly represented.

And now this defendant, having fully answered the interrogatories addressed to him, further answering in defence to said bill of complaint, says that no case is made by said bill, or can be made by proof of the averments thereof, which is a proper subject of equitable cognizance or relief, or for which the said complainant has not a plain, complete, and adequate remedy at law.

And this defendant further says that the Thomas M. League named in said bill died before the filing thereof, leaving as his heirs Esther Y. League, his widow, Thomas J. League, Esther A. Wells, married to Clinton G. Wells, and John C. League, a minor, under the guardianship of his mother, Esther Y. League, all of whom are citizens of Texas, but are not made parties in this cause; wherefore this defendant says that said bill is defective for want of necessary parties, and should be dismissed.

And this defendant further says that he and John W. Lapsley, James L. Price, Thornton Goldsby, and Thomas J. Frow, all

174 through said Lapsley, as their representative, and also Thomas M. League and John C. Watrous, purchased the tract of land in said bill mentioned, for a valu'ble consideraation in money by them,

through said Lapsley, then paid, to wit, in the year 1850, in good faith, and believing that the chain of transfer of title from the government, to wit, the State of Coahuila and Texas, down to their vendors, to wit, N. B. Menard and Nathaniel F. Williams, as the vendors of said League, and to said League as the vendors of said Lapsley, was perfect and valid, and without any knowledge, actual or constructive, suspicion or doubt that there was any imperfection in the power of attorney from said complainant to Samuel M. Williams, authorizing the latter to sell said land.

And this defendant further says that the said complainant, if he had any title or claim to said land, *and* had abandoned or lost it before the filing of his bill, by said laches and neglect in prosecuting it, and thereby informing and cautioning the public not to purchase said land from a person held out to the world as authorized by him to sell it; that
175 said testimonio, as this defendant is informed, was on file in the land office of the Republic of Texas, in 1838, and thereafter, and was recorded in the counties where the land was situated, in 1856; that the sale to said Lapsley was made in 1850, and recorded in 1851; that the land was publicly represented by said Samuel M. Williams from the year 1833 to 1840 as being for sale, and as in his power to sell, and was known as belonging to Stephen F. Austin; that it was, in fact, sold to Mrs. St. John, in 1833 or 1834, to raise money for the said Stephen F. Austin, and the deed to her trustees, made in 1840, was then made for greater safety only; that Mrs. St. John publicly exercised acts of ownership over it, and her agents or tenants were upon it; that from July, 1850, to the present time said land has been in the possession of said Lapsley, by his agents and tenants; that said complainant, in case he had been the true owner of said land, would have cared for and protected his interests and asserted his rights, but that, until about the year 1859 or 1860, he never asserted any claim or right to said land, and he has never been within the State of Texas to do so; that
176 the only person now or at any time asserting a right in him are the aforesaid Simon Mussina, a notorious land speculator, and William Alexander, esq'r., equally noted for his insane prejudices, who have sought to make this claim a support for their attacks upon Hon. John C. Watrous, to whom they had become inimical on other grounds; that there is nothing to show that this bill or any other proceedings have been filed or taken at the investigation of said complainant; but he has been inactive, inert, and indifferent in regard to his alleged claim, from 1833 to the present time; he has paid no taxes on said land, and appointed no agent to take possession, nor asserted any right to it up to 1857, when said Mussina & Alexander claimed to be so appointed; that, by his conduct, he has virtually affirmed and sanctioned said power of attorney, and the conveyance made thereunder; and by his laches he has lost all right to consideration or relief in a court of equity.

And this defendant further says that the right and claim of said complainant accrued, if at all, more than twenty years before the filing of this bill, to wit, from the date of sale by Samuel M. Williams
177 to Menard & Williams, as trustees for Mrs. St. John, and more than ten years before the filing of this bill, if such right and claim is deemed to accrue only from the time when the conveyance from Menard & Williams to said League, and from said Leag'e to Lapsley, were put on record, and that such claim is, therefore, a stale demand, and will not be inforced by a court of equity held in the State of Texas and administering the laws thereof.

And this defendant further says that the said Lapsley, who represented his interests, has, through his tenants and agents, had and held continuous peac'able adverse possession of said tract of land in said bill mentioned for more than three, five, and ten years before the filing of said bill, holding the same under all the requisites prescribed by the act of limitation of Texas as more fully set forth in his answer, to which this defendant refers, and that the said complainant is therefore barred and precluded from commencing or prosecuting this suit by reason of such act of limitation.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged,
178 without this, that there is any other matter, cause, or thing in said bill of complaint contained material or necessary for this defendant to make answer unto, and not her'in well and sufficiently answered, confessed, and avoided, traversed, or denied, it is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willingly to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

W. PLATTENBURG.

WALTON & DE NORMANDIE,
*Solicitors for Plattenburg.*

STATE OF ALABAMA, *Dallas County:*

On this, the second day of October, 1868, before me personally appeared Westley Plattenburg, to me personally known, and made oath that he has read the above answer, which is subscribed by him, & knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be on his information and belief; and as to those matters, he believes them to be true, & that the word "unless" was interlined & inserted between the word "not" and "the. by," on the 17th page before the said answer was signed & sworn to.

W. PLATTENBURG.

Signed & sworn to by s'd Westley Plattenburg before me this 2nd of October, 1868.

[L. S.]

J. F. CONOLEY,
*Judge of Probate, Dallas County, Ala.*

179 And afterwards, to wit, on the 18th day of March, A. D. 1870, the following entry appears upon the minutes of the court:

*Order of court on motion.*

LA VEGA *vs.* LAPSLEY ET AL. } No. 37. In chancery.

On the 7th February, 1870, it was ordered by the court that the decree pro confesso as the def't, Thomas J. Frow, taken in Sept., 1868, be made absolute. On the 16th of Feb'y, 1870, the def't moved to set it aside. I do not think the reasons alleged in support of this motion are sufficient, and it is therefore refused. The counsel of complainant will draw up a final decree, and submit it to the court for enrollment before its adjournment.

March 18, 1870.

T. H. DUVAL, *U. S. Judge.*

In pursuance of said order, the solicitor of complainant prepared and tendered to the court draft of a final decree, to which draft of final decree the defendants interposed the following objections, and moved the court to withhold the signature of the court from the same.

Which objections are endorsed, to wit:

No. 37. In chancery. Vega vs. Lapsley et al. Motion giving grounds in opposition to decree, and for rehearing by def't Frow. Filed March 21, 1870. M. Hopkins, clerk.

And is in words, to wit:

180 In circuit court U. S., west. district of Texas, at Austin, January term, 1870.

TOMAS DE LA VEGA *vs.* JOHN W. LAPSLEY ET ALS. } In chancery. No. 37.

And now comes the def't Tho's J. Frow, and interposes the following objections to the decree tendered by the complainant for the signature of the presiding judge & for record in this case, as the final decree against him, the said Tho's J. Frow; and he, the said Tho's J. Frow, for the reasons here given, asks that the signature of the court be withheld from said draft of a decree, and he be given a rehearing in this case, to the end that equity may be done, and the rights and substantial interests of the parties, and especially of this def't, may be seen by the court and adjudicated upon in the final decree that may hereafter be signed and recorded in this case, and that the orders of the court of the 14th of February and 18th of March, so far as they relate to this def't, be distinctly set aside; and—

1. Because said decree, as drafted and tendered, adjudicates the def't in contempt of the orders made by the court where no such adjudication is made by the court in the minutes taken.

2. Because the said decree does not follow out and decree the relief sought by the prayer of the bill; nor can it do so, if attempted,
181 without concluding his, the said defendant Frow's, co-defendants in their defence, against whom there is no decree now sought.

2½. Because comp't has shown no such interest in this def't, nor such state of facts, as to entitle him to a decree.

3. Because the rendition of said decree, as framed, will greatly and irreparably injure and prejudice the co-defendants of the said Frow.

4. Because the said decree is too general, is not sufficiently specific, is uncertain, indefinite, and does not definitely set forth the remedy extended by the court, nor sufficiently set forth the rights of the parties thereto, as intended to be extended by the court.

5. Because no decree can be rendered by the court on the bill as taken confessed without proof aliunde being submitted to the court.

6. Because the bill itself is fatally defective; and, if taken as confessed, cannot support the decree tendered, or any other decree which extends the relief sought by the prayer of said bill.

7. Because said bill is multifarious, in that it seeks a discovery in aid of suit at law, and at same time sets up another cause of action, to wit, to remove clouds from title and to quiet possession.

8. Because it appears from the face of the bill that the cause of action therein set up, or part thereof, viz, the part and all the parts

182 which set up in comp't any rights on the alleged ground that the testimonio of 5th May, 1832, is a forgery, is a stale demand, and that in equity as in law the said comp't is barred and precluded by gross laches and negligence from obtaining the relief sought in said bill.

9. Because it appears from the face of the bill that the court has no jurisdiction to extend the relief prayed for, so far as a discovery is sought to aid any suit at law, because to that extent the remedy of the comp't was full, complete, and perfect at law, in that this defendant, as well as all of his co-defendants, could have been examined as witnesses in the suit at law under and by virtue of the statutes of the United States.

10. Because it does not appear that the discovery sought by the bill is material to the def't in the prosecution of his said suit at law.

11. Because there is a patent want of equity in the bill.

12. Because the said bill shows upon its face that more than 20 years elapsed between the date when said testimonio was first used in a public and notorious manner, and any action on the part of comp't to denounce it as a fraudulent document or a forgery, as is now alleged, and he gives no excuse whatever for such delay and laches.

13. Because no final decree can be rendered against this defendant until the whole case as to all of the defendants is disposed of by the court.

183 14. Because it appears to the court, from the whole pleading in the case, that the cause of action on the part of the comp't is the same against all the def'ts, viz, depending on the establishment of the alleged fraudulent execution of the said testimonio, and relieving himself from the laches and stale demand as shown by the bill, and defeating def'ts in their long and notorious possession of said lands.

15. Because the cause of action being the same against all the def'ts, but one final decree can be entered in the case.

16. Because the court erred in making the judgment pro confesso, taken on the 7th day of September, A. D. 1868, final, for all the reasons set forth in the motion of this def't to set the same aside filed in this court on the 16th day of February, 1870, which motion is here referred to and made part of this motion, and leave asked to refer thereto as often as may be necessary.

17. Because the showing of this def't was sufficient to account in a court of equity for the failure to answer, as is apparent from the exhibits noted and referred to in his said motion filed in court as aforesaid, on the 16th day of February, A. D. 1870, and as is apparent from the affidavit of this def't, dated the 5th day of February, A. D. 1869, and which was seen by the court while considering the said motion, which

184 paper is now here specially referred to as a part hereof.

18. Because this defendant has, as he believes, a good and sufficient defence to the comp't's action if a rehearing is granted and opportunity given him to answer the said bill and show his defences.

19. Because it is apparent to the court, from all the papers and proceedings in this case so far as they relate to this defen't, that injustice has been done to him.

20. Because it is apparent to the court, from all the papers and proceedings in this case, that no decree can be entered giving to the comp't the relief which he seeks in the prayer to this bill.

21. Because the decree tendered cannot be entered and recorded as the final decree in this case, because it does not follow the prayer of the bill, and because it is vague, uncertain, and indefinite.

22. Because no final decree can now be entered in this case in its present attitude.

23. Because the comp't has not, from the allegations of his bill, nor from proofs aliunde, shown himself entitled to the relief prayed in the bill, nor to the relief extended in the tendered decree.

24. Because it is apparent to the court that the complainant cannot have the relief sought by the bill until the whole case is disposed of.

185 25. Because part of the relief prayed for in the bill cannot be extended to the exclusion of the remainder where the decree is entered on a judgment taken pro confesso.

26. Because the relief prayed for must, in the present attitude of this case as to the def't Frow, be taken as an entirety, according to the prayer of the bill, or not at all.

27. Because the relief prayed for in the bill cannot be taken as an entirety against the said Frow without precluding the co-def'ts of this def't.

27. Because said decree is inconsistent with the prayer of the bill.

28. Because of all the reasons which appear upon the face or from the papers and proceedings in this case which show irregularity, injustice to def't, or want of equity in the comp't.

29. For divers other good and sufficient reasons which appear from the papers and proceedings in the case.

For all and each and every of which reasons this def't asks that said decree tendered be not signed by the court, nor entered and recorded as the final decree in this case against this def't, and that he have a rehearing, for that justice may be done.

WALTON & DE NORMANDIE,
*Sol's for Def't Frow.*

186 We certify that we believe that the foregoing grounds, shown in opposition to the signing of the decree tendered, and the entry and record of it, and for a rehearing before the court, are good and sufficient grounds in law and equity; and that they are not interposed for delay.

WALTON & DE NORMANDIE,
*Sol's for Def't Frow.*

187 *Affidavit of Tho' J. Frow, referred to as Exhibit , in def't's objections to decree in Exhibit No. 5.*

Affidavit of Tho's J. Frow. Endorsed: "Filed nunc pro tunc by order of court, as of 16th of February, 1870. M. Hopkins, clerk."

THE STATE OF PENNSYLVANIA,
*Juniata County:*

I, Thomas J. Frow, a citizen of Alabama, residing temporarily in the State of Pennsylvania, being duly sworn, make the following statement under oath, to wit:

Being in Texas, in or about the month of May, (latter part,) 1868, I was served with a subpœna in the case of Tomas de la Vega vs. John W. Lapsley & others, in the circuit court of the United States, for the western district of Texas, at Austin, in chancery. On my return to Alabama, I confer'ed with said Lapsley, in relation to this suit. He had practised law for many years in Selma, where we both resided, and it had been my custom to consult him, and rely upon his legal counsel, especially in matters pertaining to the litigation connected with the tract of land refer'ed to in said La Vega's bill of complaint, in relation to which the said Lapsley had been accustomed to give directions. I

learned from him that, although it was not required of him,
188 (he not having been served with a subpœna or other process in said case,) to answer the bill of complaint of said La Vega, it was his intention to do so as early as practicable, so that the case might be ready for trial, without unnecessary delay; and he was then engaged in preparing a statement relative to his answer. By misconstruing or misunderstanding, as I have been since apprised, some statement or remark made to me by the said Lapsley, I was led to believe that, as the legal title of said tract was in him & *and* not in any of the other defendants, his answer alone would be sufficient, and that it would not be necessary for me or the other defendants to put in answers; and this fact, as understood by me, I communicated to Mr. W. Plattenburg, one of the defendants in the case. Had I been acquainted, as I was not, with proceedings in chancery suits and apprised of the differences between them and ordinary proceedings in law, in which I had some experience, & in which the pleadings were made up by the attorneys of the parties, I would probably not have been misled to make the mistake
I did in supposing that an answer from me was unnecessary. I
189 was sick or considerably indisposed during my visit at Texas, and continuing so after my return, I left Alabama for a northern and healthful climate in Pennsylvania, where I had been in the habit of resorting occasion'ly for many years. On reaching my place of distination in Pennsylvania, I was confined to my bed or room by sickness continually for several months; and when slowly convalescing, I received a letter from the said John W. Lapsley, on his return from the North, where he had been for several months, informing me of the necessity of my answering said bill, urging me to do it as soon as possible. On getting this letter, and as soon as I could, with any degree of safety, venture to do so, I went to Philadelphia to make my answer; but as the event showed, acted imprudently in doing so, for I had a relapse of my sickness, and had difficulty in getting back to my place of sojournment. Having answered the bill, with the facts within my knowledge or information, & made oath to it before a commissioner of
Texas, who I believed, in the absence of better counsel, (and in
190 fact did not question his authority, which I regarded as undoubted,) was empowered to administer oaths in such cases, I sent the answer to Mr. Lapsley, to be by him forwarded to Austin, & filed. But I am now informed that my affidavit is insufficient, for the reason that the commissioner before whom it was made, who certified it, was incompetent to administer & certify the oath; and also that my answer is regarded as defective and liable to exceptions—exceptions having been made & sustained to other similar answers of other defendants. I therefore respectfully pray the honorable court for leave and further time to make another and as perfect an answer as I may be capable of making, which I will do at the earliest moment practicable. While I was waiting for an opportunity to make my answer, (being confined as stated above by sickness,) I received a second letter from Mr. Lapsley, urging me to return to Alabama, as soon as possible, to make my answer there; but it was absolutely impossible for me to do so, or to attempt it, owing to the state of my health, at least,
191 without seriously endangering my life; and my health still continues so feeble as to deprive me of the power of returning home or exerting myself much in business. It has not been through any want of respect to the mandate of the court, or from any unwillingness to disclose all that I was capable of disclosing in an answer, that my an-

swer to said bill has been delayed, but the delay has arisen solely from the causes hereinabove stated.

THO'S J. FROW.

COMMONWEALTH OF PENNSYLVANIA, *ss:*

Before me, president judge of the fifth judicial district of said Commonwealth, personally appeared Tho's J. Frow, (whose name, in his own *paper* handwriting, is subscribed to the foregoing statement,) who being by me first duly sworn according to law, did depose and say that the facts set forth in the foregoing statement are correct and true, according to the best of his knowledge and belief.

Witness my hand the 5th day of February, A. D. 1869.

JAMES P. STERETT,
*Pres't Judge of the 5th Jud'l Dist. of Pennsylvania.*

192 COMMONWEALTH OF PENNSYLVANIA, *ss:*

I, Jacob H. Walter, prothonotary of the court of common pleas, in and for the judicial district of said Commonwealth, (the same being a court of record,) do certify that the Hon. James P. Sterrett, before whom the affidavit of Tho's J. Frow, hereto attached, was made, is now, and was at the date thereof, president judge of the said court, duly commissioned and sworn, and by law authorized to administer oaths and affidavits; and I further certify that the name of the said judge appended to his certificate is his own proper handwriting.

In witness whereof I have hereunto set my hand and affixed the seal of said court the 10th day of February, A. D. 1869.

[L. S.] JACOB H. WALTER,
*Prothonotary.*

193 COMMONWEALTH OF PENNSYLVANIA, *ss:*

I, James P. Sterrett, president judge of the fifth judicial district of Pennsylvania, do hereby certify that Jacob H. Walter, esq'r., by whom the above attestation was made, was, at the date thereof, prothonotary of said court, duly commissioned and qualified, and that the said attestation is in due form of law, and made by the proper officer; and I further certify that the signature of said prothonotary is his own proper handwriting.

Witness my hand and seal the 10th day of February, A. D. 1869.

[L. S.] JAMES P. STERRETT,
*Pres't Judge 5th Jud'l Dist. of Pennsylvania.*

194 *Motion of complain't's urging decree.—Filed March* 21, 1869.

In the circuit court of the United States for the western district of Texas, at Austin, at January term, A. D. 1870.

BETWEEN TOMAS DE LA VEGA, COMPLAINANT,
*and*
JOHN W. LAPSLEY & OTHERS, DEFENDANTS. } In chancery. No. 37.

Tomas de la Vega, the complainant in the above-entitled and numbered cause, by his solicitor, as the announcement has been made that this court is to abridge its present term on to-day, moves the court to order, as of course and at once, that the draft of decree against the defendant Thomas J. Frow, which was prepared in obedience to the order

of this court made on the eighteenth day of this month, and is now in the hands of the court, a copy having been delivered to W'm M. Walton, esq., one of the solicitors for said defendant on Saturday last, be signed, filed, and entered in pursuance to said order of the eighteenth of March, A. D. 1870, which has not been in any manner attacked of record by said defendant.

Complainant further suggests, in support of this his motion of course, that he has no objection to any modification of the language of said draft by the court, provided such modification does not deprive him of what he is entitled to have by the terms, and the prayer of his bill of complaint, and by said order of the eighteenth, upon which exclusively, and without wa'ving any previously made motions of com-
195 plainant which have been submitted, this motion is based.

March 21, 1870.

ALEXANDER,
*Solicitor for Complainant.*

Filed March 21, 1870. M. Hopkins, clerk.

And afterwards, to wit, on the 23d day of March, anno Domini 1870, the following entry and order appear on the chancery minutes or order book, to wit:

*Order overruling objection to decree final.*

Circuit court in chancery, March 23d, 1870.

LA VEGA
*vs.* } No. 37.
LAPSLEY ET AL.

On motion of defendant Frow, in opposition to decree absolute and for returning.

In determining some days ago that the decree pro confesso as to def't Thomas J. Frow should be made absolute, and making an order to that effect, I examined the whole subject as well as I was capable of doing, and the conclusion then arrived at, seem s to me yet correct. A rehearing is therefore refused.

The defendants to this bill were required to answer the same separately, a failure of any one of them to do so, resulting in a judgment pro confesso, made absolute, requires that the allegations of the bill should be taken to be true as to him, and the only question is as to what is the proper decree to be rendered. This must depend upon the nature and object of the bill, the averments contained in it, and its prayer.

But I take it that whatever final decree may be rendered
196 against one defendant, upon a pro confesso, can in no wise effect or compromise the rights of other defendants who have answered and set up defences.

The decree, now directed to be entered as to Frow, modified somewhat from the original draft, is believed by me to be warranted by the bill, and the clerk will enter the same accordingly.

T. H. DUVAL.
M. HOPKINS, *Clerk.*

*Decree.*

In the circuit court of the United States for the western district of Texas, at Austin. January term, A. D. 1870.

BETWEEN TOMAS DE LA VEGA, COMPLAINANT, *and* JOHN W. LAPSLEY AND OTHERS, DEFENDANTS. } In chancery. No. 37.

This cause came on to be heard at this term as between Tomas de la Vega, the complainant therein, and Thomas J. Frow, one of the defendants therein, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, namely: That the pro confesso heretofore, to wit, prior to this term, entered against said defendant Thomas J. Frow, who has been duly served with a subpœna in this cause, who has appeared by his solicitors therein (and yet is in default for having neglected and failed to answer complainant's bill, as required by the orders made by this court,) be, and is hereby, made absolute; and that the bill of complaint in this cause be taken as true as to him, and that the prayer thereof be in all things granted as between complainant and said defendant, their privies, agents, and attorneys, and every and all persons claiming under them or any of them; that the title to and pos-
197 session of complainant of the certain tracts of land (in said bill described) situate in what is now McLennan County, in the State of Texas, on the east bank of the Brazos River, opposite the town of Waco, consisting of eleven sitios or square leagues, the metes and bounds of which are publickly and generally known; said tract being in like manner described as "the Tomas de la Vega grant," be quieted in complainant, and freed from all clouds put upon it by said defendant.

That complainant have his judicial writ of injunction against said defendant, perpetually injoining said defendant, &c., as in said bill of complaint prayed for; and that complainant have and receive of said defendant all the costs of this cause incurred by the parties to this decree for which execution may issue.

(Signed) T. H. DUVAL, *U. S. Judge.*

ALEXANDER,
*Solicitor for Complainants.*

Teste: M. HOPKINS, *Clerk.*

*Notice of appeal.*

And thereupon the solicitor of the defendant Thomas J. Frow gave in open court notice of appeal, and it was ordered by the chancellor that the clerk spread upon the minutes said notice.

MARCH 23, 1870.

And afterwards, to wit, on the 28th day of March, A. D. 1870, the defendant filed the following petition for an appeal, duly signed and allowed by the Hon. Thomas H. Duval, sitting as circuit court judge, which petition for appeal is in words, to wit:

198 In the circuit court of U. S., west dist. Texas, at Austin, March 1870.

DE LA VEGA, TOMAS,
*vs.*
JOHN W. LAPSLEY, WESTLEY PLATTENBURG, Thomas J. Frow, Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Rennick, J. B. Earl's adm'r, Edward Kellum's adm'r, W. R. Kellum, and John C. Watrous. } In chancery. No. 37.

The defendant, Thomas J. Frow, one of the above-named defendants against whom a judgment final, by default, was rendered at the January term, 1870, of the said court, and against whom a final decree was entered, separate from his co-defendants, granting to the complainant the relief prayed in the original bill of complainant, prays for an appeal from the judgment of the court & from the final decree entered, to the end that the manifold errors of the court preceding said decree, and in the rendition of said final judgment and the entry of said final decree, may be revised and corrected, and the law of the case
199 & the equities between said defendant and said compl't may be awarded; and as part of such errors committed, defendant here refers to and makes part of this his petition for appeal, the several objections embraced in said defendant's opposition to the entry of a final decree, (* here cl'k will insert,) as also any and all other defects and errors that have been or may be raised to the proceedings in this case, and which may lawfully be heard by the Supreme Court, and said defendants here tenders an appeal bond for the approval of the judge, & citations to be signed and tested according to law. And as in duty bound, &c.

HALE, WALTON & DE NORMANDIE,
*Sol's for Def't Frow.*

The appeal prayed for in the foregoing petition is hereby allowed.
T. H. DUVAL,
*U. S. Judge.*

Filed March 28th, 1870. M. Hopkins, clerk.

200 And at the same time, to wit, March 28th, 1870, the defendant Tho's J. Frow, filed his bond for an appeal.

(Endorsed:) Filed March 28, 1870. M. Hopkins, clerk.

Know all men by these presents that we, , , , are held and firmly bound unto Tomas de la Vega, in the full and just sum of five hundred dollars, to be paid to the said Tomas de la Vega, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and seventy.

---

* See ante pages 196 & 197 for decree.

Whereas lately, at a term of the circuit court of the United States for the western district of Texas, begun and held for the January term, A. D. 1870, in a suit depending in said court between Tomas de la Vega, as complainant, and John W. Lapsley, Westl'y Plattenburg, Thomas J. Frow, Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, J. B. Earle' adm'r,
201 Edward Kellum' adm'r, W. R. Kellum, and John C. Watrous, defendants, a decree was rendered against the said Thomas J. Frow, one the defendants therein, and the said Thomas J. Frow having obtained an appeal, and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Tomas de la Vega, and his attorney of record, W'm Alexander, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such that if the said Thomas J. Frow shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

THOMAS J. FROW, [L. S.]
By WALTON AN' DE NORMANDIE,
*His Solicitors.*

W. M. WALTON. [L. S.]
B. H. DAVIS. [L. S.]

Sealed and delivered in the presence of—

Approved by—

THO'S H. DUVAL,
*U. S. Judge.*

202 And at the same time citation on appeal was issued; and, to wit, on the 28th day of March, A. D. 1870, duly signed by the Hon. Tho's H. Duval, U. S. judge, to wit:

*Citation on appeal.*

UNITED STATES OF AMERICA:

In the U. S. circuit court, western district of Texas, sitting at Austin.

THOMAS J. FROW, APPELLANT,
*vs.*
TOMAS DE LA VEGA, APPELLEE.

The President of the United States to Tomas de la Vega, or his attorney of record, William Alexander:

You are hereby cited and admonished to appear at the next term of the Supreme Court of the United States, to be held at Washington, on the first Monday of December next, to show cause, if any there be, why the decree rendered in your favor by the circuit court of the United States, sitting in chancery, at Austin, in said district, in a certain cause or suit therein depending between Tomas de la Vega, as complainant, and John W. Lapsley, Westley Plattenburg, Thomas J. Frow, Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, J. B. Earle' adm'r, Edward Kellum,

adm'r, W. R. Kellum, and John C. Watrous, as defendants, num-
203 bered 37 on the chancery docket of said court, at Austin, should not be reversed, and speedy justice be done to the parties in that behalf, in pursuance of an appeal obtained by Thomas J. Frow, one of said defendants, according to his petition, filed in the circuit court of the United States for the western district of Texas, at Austin.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 28th day of March, A. D. 1870.

T. H. DUVAL,
*U. S. Judge.*

Test with seal of court.
[L. S.] M. HOPKINS, *Clerk.*
Issued March 28th, 1870.

M. HOPKINS, *Clerk.*

Marshal's return indorsed, to wit:

Received in office March 28th, 1870. Executed March 29th, 1870, by handing to W'm Alexander, attorney & solicitor of Tomas de la Vega, in person, a true copy of this citation under the seal of the court.

THOMAS F. PURNELL,
*U. S. Marshal W. D. Texas.*

204 I, Mathew Hopkins, clerk of the circuit court of the United States, fifth circuit in and for the western district of Texas, at Austin, do hereby certify that the foregoing and annexed 203 number or 204, (two hundred and four) written pages, contain a full, true, and correct transcript of the record and all the proceedings had in case No. 37, chancery, so far as they relate to Thomas J. Frow, one of the defendants in said cause, entitled Tomas de la Vega versus John W. Lapsley, Thomas J. Frow, and others, defendants, as they appear of file and record.

In testimony whereof I have hereto set my hand and the impress of the seal of said court, at Austin, this 23d day of November, A. D. 1870.

[SEAL.] M. HOPKINS, *Clerk.*

(Indorsement on cover:) No. 468. Thomas J. Frow, appellant, vs. Tomas de la Vega. W. Texas C. C. U. S. Filed 6th January, 1871.